

**AMENDED AND RESTATED BYLAWS OF
THE UNIVERSITY OF SOUTH CAROLINA UPSTATE FOUNDATION**

**ARTICLE I
NAME AND OFFICES**

Section 1. NAME. The name of this organization shall be the University of South Carolina Upstate Foundation, Inc. (the “Foundation”). The provisions set forth herein comprise the Bylaws of the Foundation (the “Bylaws”).

Section 2. PRINCIPAL OFFICE. The Foundation shall maintain its Principal Office as required by the South Carolina Nonprofit Act (“the Act”), in Spartanburg County, State of South Carolina or such other place as designated by the Board of Directors. The Foundation may have such other offices within and without the State of South Carolina as the Corporation may require.

Section 3. REGISTERED OFFICE. The Foundation shall maintain a Registered Office as required by the Act at a location in South Carolina designated by the Board of Directors. In the absence of a contrary designation by the Board of Directors, the Registered Office shall be the Principal Office.

Section 4. REGISTERED AGENT. The Foundation shall maintain a Registered Agent as required by the Act who shall have a business office at the Corporation’s Registered Office. The Registered Agent shall be designated by the Board of Directors to serve at its pleasure.

**ARTICLE II
PURPOSES**

Section 1. PURPOSE. The Foundation is established to support the University of South Carolina Upstate (the “University”) in its educational, instructional, scientific, literary, research, service, charitable, and outreach endeavors. The primary purpose of the Foundation is to solicit, receive, accept and 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.

The Foundation is organized and shall operate exclusively for charitable, educational or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Service Code; and, no part of the net earnings thereof shall inure to the benefit of any private shareholder or individual; provided further that no substantial part of the Foundation’s activities shall be the carrying on of propaganda or otherwise attempting to influence legislation; provided further that the Foundation shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

Section 2. SPECIFIC PURPOSES. The Foundation’s specific purposes shall be:

- (a) To build an endowment fund, the net income therefrom to be utilized as directed by

the Board in accordance with established priorities and donor intent for the exclusive benefit of the University;

(b) To assist with a program of annual, major and planned giving with the net proceeds received, unless otherwise restricted, to be applied to meet annual commitments against unrestricted funds;

(c) To receive and administer selected grant and contract awards for the purpose of research, instruction, service, outreach, and other priorities of the University or other activities elsewhere by personnel of the University; and

(d) To annually 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.

ARTICLE III BOARD OF DIRECTORS

Section 1. AUTHORITY. The management of all the affairs, property, and interest of the Foundation shall be vested in the Board of Directors. The Board is responsible for overall policy and direction of the Foundation and may delegate authority for day-to-day operations to an Executive Director or to other personnel as it sees fit for the administration of its duties. The Vice Chancellor of University Advancement for the University shall also serve as the Executive Director of the Foundation unless otherwise voted upon by the Board of Directors. The Board shall advise the University's Chancellor and consent to the hiring and retention of the Executive Director, including performing an annual performance review. Any employees of the Foundation may be paid reasonable compensation for services rendered at the discretion of the Board.

Section 2. COMPOSITION. The Board of Directors shall be composed of Designated Directors and Elected Directors as set forth at Sections 3 and 4 below.

Section 3. DESIGNATED DIRECTORS. The following shall be Designated Directors with no voting power: (1) the Chair of the Board of the Spartanburg County Commission for Higher Education or designee; (2) the Chancellor of the University; (3) the Executive Director of the USC Upstate Foundation; (4) the Chair of the University's Alumni Advisory Council; and (5) the University's Vice Chancellor for Finance and Administration. The persons occupying these offices shall serve as Designated Directors for so long as those persons hold such designated office or until such Designated Director's removal, resignation, or incapacity.

Section 4. ELECTED DIRECTORS. In addition to Designated Directors, the Board shall include no fewer than sixteen (16) and no more than twenty (20) individuals elected by the Board of Directors at the annual meeting or any duly called meeting. Elected Directors shall be selected from the public at large and have an interest in promoting the purposes of the Foundation. The Foundation seeks to have broad representation across the state of South Carolina and from its partnership boards and other organizations supportive of the University. No employee of the University may be elected to the Board. Newly-elected directors shall serve an initial term of

four (4) years. Upon expiration of the term of a director in good standing, the director shall be eligible for re-election for one additional term of four (4) years. After two consecutive terms in office, Elected Directors shall be ineligible for re-election for one year.

Section 5. RESIGNATION. A director may resign at any time by delivering written notice to the Chair of the Board of Directors or its Secretary. A resignation is effective when the notice is effective unless the notice specifies a later date. If the resignation is made effective at a later date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date. Any director who applies for paid employment with the University or the Foundation shall be deemed to have resigned from the Board of Directors.

Section 6. REMOVAL. A director may be removed only at a meeting called for the purpose of removing the director and the meeting notice states that the purpose, or one of the purposes, of the meeting is the removal of the director. Any director may be removed from office without cause by a two-thirds (2/3) vote of the directors then in office. A director may be removed from office with cause by a majority vote of the directors then in office. Any director who fails to attend fifty percent (50%) of the meetings in any fiscal year shall be automatically removed from the Board of Directors at the close of that fiscal year; however, the Board of Directors may waive a director's automatic removal if the director shows good cause, or justification, for the absences.

Section 7. VACANCIES. Whenever a vacancy occurs due to death, resignation, or removal, or any other circumstance, a new director may be elected by a majority of the Board of Directors to fill the unexpired term upon seven days' notice prior to such consideration. A vacancy may remain unfilled so long as the total number of directors does not fall below sixteen (16) pursuant to Section 4 of this Article.

Section 8. COMPENSATION AND LIABILITY. No director shall receive compensation for service in such capacity as a director. The Board of Directors may authorize the payment of, or reimbursement for, all actual expenses of each director if such is approved in advance. The directors shall not be liable for loss to the Foundation, including any loss incurred on investment of the Foundation's funds, except in the event of intentional misconduct. A director who applies for a paid position with the Foundation shall be deemed to have resigned from the Board of Directors.

ARTICLE IV MEETINGS

Section 1. CHAIR OF MEETINGS. The Chair or his designee shall preside over all meetings of the Board of Directors, and notice of such meetings shall be given in accordance with this Section by or at the direction of the Chair or Secretary of the Board.

Section 2. ANNUAL AND REGULAR MEETINGS. The annual meeting of the Board of Directors shall be the last scheduled meeting of the fiscal year, at which time directors and officers shall be elected for the coming year. Notice of the date, time, and place of the annual meeting shall be given no fewer than ten (10) and no more than thirty (30) days before the meeting. The Board

of Directors may by resolution provide for the holding of additional regular meetings without notice other than such resolution; provided, however, the resolution fixes the dates, times, and places for these regular meetings. A listing of regular meetings for the calendar year may also be provided at the beginning of the year.

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

Section 4. ACTIONS REQUIRING ADDITIONAL NOTICE. Meetings at which the following actions are to be considered shall require not less than seven (7) days prior written notice unless notice is waived pursuant to section (g) below:

- (i) removal of a director;
- (ii) a transaction involving a director conflict of interest;
- (iii) indemnification of officer, employees and agents;
- (iv) amendment of the Articles of Incorporation;
- (v) amendment of these Bylaws;
- (vi) merger;
- (vii) sale of assets other than in the regular course of activities; and
- (viii) dissolution.

Section 5. FORM OF NOTICE. Notice shall be given in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person, by telephone, email, or other form of wireless communication; or by mail or private carrier including specifically campus mail of the University.

- (a) Oral Notice. Oral notice, if reasonable under the circumstances and communicated in a comprehensible manner, is effective when communicated.
- (b) Waiver of Notice. A Director may waive any notice required by these Bylaws, the Articles, or applicable law. The waiver must be in writing, signed by a 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.
- (c) Emergency Meetings. If the Chair determines that an emergency meeting of the Board of Directors is required to conduct urgent business within a timeframe that does not permit satisfaction of the notice requirements of this Section, the notice requirements shall be

waived; provided, however, that the Chair shall make a good faith effort to notify each Director it is practicable to reach regarding the date and hour of such emergency meeting, and the Chair may give such notice by whatever means are practicable under the circumstances, including email or telephone to assure a quorum is assembled.

Section 6. ACTION WITHOUT A MEETING. To the fullest extent permitted by the Act, any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting by unanimous written consent. The action must be evidenced by one or more written consents describing the action taken, signed by each Director of the Board, and included with the minutes of the Foundation 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 7. PARTICIPATION BY TELECOMMUNICATION. Any director may participate in, and be regarded as present, at any meeting of the Board of Directors by means of conference telephone, online videoconference, or any other means of communication by which all persons participating in the meeting can hear each other at the same time.

Section 8. QUORUM. A majority of the total number of voting directors then in office shall be necessary at any regular or special meeting to constitute a quorum for the transaction of Foundation business. In the absence of a quorum, a meeting may be adjourned from time to time, without notice other than an announcement at the meeting, until a quorum is present. At such adjourned meeting a quorum of directors may transact such business as might have been properly transacted at the original meeting. No director may vote by proxy.

Section 9. CONDUCT OF MEETINGS. Unless the Board of Directors or chairman of the meeting determines otherwise, meetings of the Board of Directors shall not be required to be held in accordance with rules of parliamentary procedure.

Section 10. ACTION. The Board of Directors shall take action pursuant to resolutions adopted by the affirmative vote of a majority of the directors participating in a meeting at which a quorum is present, or the affirmative vote of a greater number of directors where required by these Bylaws, the Act, or otherwise by law.

ARTICLE V OFFICERS

Section 1. POSITIONS. Officers of the Foundation shall include a Chair, Vice Chair, Secretary, Treasurer, and such other offices as the Board of Directors may establish from time to time. No two of these offices may be held by one person at any given time. The officers shall be elected by and from the Board of Directors.

Section 2. METHOD OF SELECTION. All officers shall be nominated by the Governance Committee and shall be elected by a majority of the Board of Directors present at the annual meeting.

Section 3. TENURE. Officers shall serve for a term of two (2) years or until a successor has been duly elected or appointed in accordance with this Article, provided the individual is eligible to serve as a director pursuant to Article III, Section 4 of these bylaws. Officers may serve successive terms if eligible for continued service on the Board. An officer who is elected to fill a vacancy may serve the remainder of the term of the previous officer. Prior to the expiration of the term of office of any officer, or immediately after an officer's death, resignation, or inability to continue to serve, a successor officer shall be elected by a majority of the Directors of the Board to the office that may be or become vacant.

Section 4. CHAIR. The Chair shall preside at all meetings of the Board of Directors and perform such duties as usually pertain to such office and exercise such other powers and perform such other duties that may be designated by the Board of Directors. The Chair shall be authorized to sign statements and reports required to be filed with state or federal agencies and may be authorized to enter into any contract or agreement and to execute in the corporate name any instrument or other writing, as approved by the Board.

Section 5. VICE-CHAIR. The Vice-Chair shall perform such duties as may be assigned by the Board of Directors or by the Chair. In the absence or incapacity of the Chair, the Vice-Chair shall exercise the powers and perform the duties of the Chair.

Section 6. SECRETARY. The Secretary shall record, or cause to be recorded, all votes and the minutes of all meetings of the Board of Directors and shall ensure the integrity of Board documents. In the event of the Secretary's absence from a meeting or inability to perform its duties, the Chair may designate a temporary substitute.

Section 7. TREASURER. The Treasurer shall monitor the management and investment of the funds of the Foundation as directed by the Board of Directors. The Treasurer shall, upon request, report to the Board of Directors on the financial condition of the Foundation and provide such other financial records and reports as may be requested by the Board. The Treasurer shall sign such documents as may require the Treasurer's signature and shall perform such other duties as may be required by law. The Treasurer shall also ensure the integrity of the Foundation's financial reporting in conformance with Board policies.

Section 8. SIGNATORY AUTHORITY. All deeds, contracts and other legal instruments shall be signed by the Executive Director or Chair of the Board or other duly authorized individuals of the Foundation, in accordance with such operating guidelines, policies and procedures as may be authorized by the Board of Directors including the 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.

Section 9. COMPENSATION. All officers of the Foundation shall serve without compensation

unless otherwise voted upon by the Board.

ARTICLE VI COMMITTEES

Section 1. COMMITTEES. The Board of Directors may designate and delegate authority to one or more operational committees to respond to organizational needs and priorities. Any such committee may be designated as a standing committee to be appointed annually pursuant to Section 2 below or as a special “ad hoc” committee for specific circumstances or transactions with a limited duration. Each committee shall be composed of two or more directors. All committee members shall serve at the pleasure of the Board of Directors. The Chair of the Board of Directors shall designate one member of each committee as its chair. A majority of directors on any committee 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. A committee may not authorize distributions; approve or recommend dissolution, merger, or the sale, pledge, or transfer or all or substantially all of the Corporation’s assets; elect, appoint, or remove directors or fill vacancies on the Board or any committee; or amend the Articles of Incorporation or these Bylaws.

Section 2. STANDING COMMITTEES. The standing committees of the Board of Directors may include but are not limited to the Executive Committee, Governance Committee, Finance and Investment Committee, and Development and Stewardship Committee. The Chair of the Foundation Board of Directors shall be a member of each such committee.

- (a) EXECUTIVE COMMITTEE. The Executive Committee shall be composed of the Chair, Vice Chair, Secretary, Treasurer, and immediate past chair. The Executive Committee shall have all the powers of the Board of Directors during the interim between Board meeting, but any Executive Committee action shall be reported to the Board of Directors within two weeks after the taking of such action for ratification.
- (b) GOVERNANCE COMMITTEE. The Governance Committee shall strengthen the future of the Foundation by identifying, recruiting, and evaluating director and officer candidates for the Board of Directors; developing and managing an orientation program for new directors; assessing director performance; and overseeing programs that motivate current directors and continue the commitment of former directors.
- (c) FINANCE AND INVESTMENT COMMITTEE. Chaired by the Treasurer, the Finance and Investment Committee shall:
 1. Oversee funds of the Foundation and evaluate the needs of the University the Foundation may meet and make recommendations to the Board on these matters as well as on the annual budget.
 2. 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 and present the audit to the Board of Directors annually.
 3. Make recommendations relevant to the mutual understandings and policies between the University and the Foundation.

4. Review and monitor the investments of the Foundation not less than quarterly, and on such other occasions as they are directed, and to report their findings to the Board of Directors.
5. Develop investment policies and practices as deemed prudent to present to the Board of Directors for approval on a regular basis; and
6. Hire, as it deems necessary, investment consultants and managers to assist in these duties.

(d) DEVELOPMENT AND STEWARDSHIP COMMITTEE. The Development and Stewardship Committee works in concert with the University's executive leadership to determine fundraising goals, priorities, and timetables. This Committee shall, in cooperation with the University's Office of University Advancement, recommend policies, procedures and programs for solicitation of major and deferred gifts, including recognition of donors; develop plans for major fund raising campaigns and initiatives; and coordinate Foundation activities with the fund raising activities of the Foundation and the University, including engaging the members of the Board in pacesetter giving, and actively identifying major prospects and soliciting gifts. The committee shall be responsible for reviewing the Foundations Gift Acceptance Policy annually and recommend adjustments to the Board as needed.

ARTICLE VII ADVISORY COUNCIL

The Board of Directors may establish one or more advisory councils as it deems desirable to assist and support the work of the Foundation. Advisory councils act as ambassadors to the community and may assist with various activities, including but not limited to fundraising, advocacy and program evaluation. Current directors may not serve on advisory councils, but former directors are encouraged to serve. The Chair shall appoint members and chairs of such advisory councils.

ARTICLE VIII FINANCIAL POLICIES

Section 1. RECEIPT OF FUNDS. The Foundation may receive income, revenues and property from any source, including but not limited to, contributions, payments, grants, donations, bequests and devises from wills and foundations, receipts and fees for services, gifts of money and other property, and any other funds or assets; provided, however, all contributions, payments and receipts and any donor-imposed conditions associated therewith must be acceptable to the Board of Directors.

Section 2. MANAGEMENT OF FUNDS. The funds received, together with the income therefrom, shall be held, retained, managed, conserved, administered, used and applied by the Foundation in the sole discretion of the Board of Directors in accordance with the purposes and provisions of these Bylaws and the S.C. Uniform Prudent Management of Institution Funds Act [South Carolina Code Ann. §§ 34-6-10, et seq.].

The Board of Directors may accept funds which are qualified, limited or restricted in their

use; provided, however, such qualifications, conditions, limitations, and restrictions shall not conflict with the purposes of the Foundation as set forth in Article III of these Bylaws and the application and use of funds as provided in Article VII of these Bylaws. Unless otherwise specifically required, such restricted contributions and/or bequests may be mingled with other contributions to the Foundation.

Section 3. USE. The Foundation shall hold, manage, invest and reinvest its funds, including but not limited to cash, securities, monies and investments (including stocks, bonds, and obligations), and shall collect and receive the income therefrom. After deducting all necessary expenses incident to the operation and administration of the Foundation, including the payment of any debt service on the obligations of the Foundation, such funds and the income therefrom shall be utilized in accordance with the purposes and provisions set forth in Article III of these Bylaws.

Section 4. EXPENSE. 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.

Section 5. FISCAL YEAR. The Foundation shall operate on the same fiscal year as the University. The period of existence of the Foundation shall be perpetual unless terminated in accordance with the dissolution provisions set forth in Article IX.

ARTICLE IX DISSOLUTION

In the event of a dissolution of the Foundation, all funds, property and assets shall revert to the University of South Carolina Upstate, or to some other organization which is itself exempt from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, or any other corresponding provision of any future federal tax code or succeeding statute of like tenor and effect, which organization appears most likely to carry out the purposes of the Foundation, or to the Federal, State, or local government for exclusively public purposes.

ARTICLE X CONFLICT OF INTEREST

Effective governance depends on deliberate, thoughtful, and objective decision-making. Decisions must be made in the best interests of the Foundation and not be influenced by the financial or personal interests of individual directors, officers, volunteers, or employees. This applies to all levels of decision-making, including decisions involving matters of organizational policy, contracting for goods and services, investment of the Foundation's funds, and other transactions. The Board of Directors shall adopt and enforce a Conflict of Interest Policy.

**ARTICLE XI
INDEMNIFICATION AND INSURANCE**

Section 1. INDEMNIFICATION. The Foundation shall indemnify, defend and hold harmless its officers and directors to the fullest extent permitted by, and in accordance with, the Act. This plan of indemnification shall constitute a binding agreement of the Foundation shall not be exclusive of any other right which such directors, officers, or representatives may have or hereafter acquire and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any bylaw, agreement, insurance, provision of law, or otherwise, as well as their rights under other Articles of these Bylaws.

Section 2. INDEMNIFICATION PLAN. The Board of Directors may adopt an Indemnification Plan implementing the rights granted in Section 1 of this Article. This Indemnification Plan shall set forth in detail the mechanics of how the indemnification rights granted shall be exercised.

Section 3. INDEMNIFICATION OF OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS WHO ARE NOT DIRECTORS. The Board of Directors may indemnify and advance expenses to any officer, employee, volunteer, or agent of the Foundation, who is not a director of the Foundation, to any extent, consistent with public policy, as determined by the general or specific action of the Board of Directors.

Section 4. INSURANCE. To the extent permitted by South Carolina law, the Foundation shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, volunteer or agent of the Foundation, or is or was serving at the request of the Foundation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Foundation would have the power to indemnify such person.

**ARTICLE XII
MISCELLANEOUS**

Section 1. BOOKS AND RECORDS. The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board and committees having any of the authority of the Board. When consistent with good business practices, any records of the Foundation may be maintained in other than written form if such other form is capable of reasonable preservation and conversion into written form within a reasonable time. The Foundation shall keep a copy of the following records at its Principal Office:

1. its articles or restated articles of incorporation and all amendments thereto currently in effect;
2. its bylaws or restated bylaws and all amendments thereto currently in effect;
3. a list of the names and business or home address of its current directors and officers; and
4. the Foundation's most recent report of each type required to be filed by the Foundation with the South Carolina Secretary of State.

Section 2. CONSTRUCTION. If any portion of these bylaws shall be invalid or inoperative, then, so far as is reasonable and possible, the remainder of these bylaws shall be considered valid and operative; and effect shall be given to the intent manifested by the portion held invalid or inoperative.

ARTICLE XIII AMENDMENT

These Bylaws and the Articles of Incorporation may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the voting directors then in office, provided a full statement of such proposed amendments shall have been furnished to each director at least ten (10) days prior to the date of the said meeting.

Adopted by Board of Directors:
February 22, 2023