The USC Upstate Foundation By-Laws

GENERAL INFORMATION

The USC Upstate Foundation (“Foundation”) is a non-profit corporation that operates within the provisions of Sections 501(c) 3 of the Internal Revenue Code of 1986, as amended. It is a sole-support Foundation for the University of South Carolina Upstate, located in Spartanburg, South Carolina.

The mission of the USC Upstate Foundation is to support the University of South Carolina Upstate in all of its educational, research, instructional, scientific, literary, service, charitable, and outreach endeavors.

The Foundation is committed to lawful and ethical behavior in all of its activities and requires that its directors, employees, and consultants conduct themselves in a manner that complies with all applicable laws and policies.

The Foundation has a fiduciary responsibility for protecting its resources and spending its funds in accordance with the gift agreements signed by donors.

ACCOUNTS PAYABLE

The Foundation has a fiduciary responsibility to ensure that all expenditures comply with donor imposed restrictions, do not jeopardize the financial status of the Foundation, and are prudent uses of resources of the Foundation. The Foundation works directly with the Office of the Chancellor and the Senior Vice-Chancellor for Academic Affairs in determining the policies that apply to the appropriate expenditure of Foundation funds by University employees. Any spending policy or procedure not specifically addressed herein shall follow the spending policy of the University.

University departments may submit to the Foundation a Check Authorization/Request, including such attachments as may be necessary. All requests shall be properly completed and signed before payment is considered by the Foundation. Requests for reimbursement should be made in a timely manner, not to exceed ninety days from the date of the expense.

Original statements, invoices and receipts are required for reimbursement. Handwritten receipts/invoices must contain the vendor’s name, address, and signature. Faxed copies of statements and/or receipts are acceptable with a fax bar containing the business name or fax number as it appears on the invoice.
ARTICLE I

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").

ARTICLE II

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 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, no substantial part of the activities of the Foundation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; provided further, 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.

Section 2. PRINCIPAL OFFICE; REGISTERED AGENT. The principal office of the Foundation shall be 800 University Way, University of South Carolina Upstate, City of Spartanburg, County of Spartanburg, state of South Carolina, 29303

ARTICLE III

Section 1. SPECIFIC PURPOSES

(a) To build an endowment fund, the net income therefrom to be utilized as directed by the Board of Directors of the Foundation (the “Board of Directors”) in accordance with established priorities and donor gift restrictions for the exclusive benefit of the University;
(b) To assist with a program of annual 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 sponsored research, instruction, service, outreach, and other priorities of the University or other activities elsewhere by personnel of the University;

(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.

Section 2. **ACTIVITIES.** The activities of the Foundation shall be in accord with the purposes as stated in its articles of incorporation and these Bylaws.

Section 3. **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 IV – DIRECTORS**

NOTE – Unless specifically noted, reference to the responsibilities and duties of the Board of Directors will also mean the Board of Governors

Section 1. **NUMBER.** The Board of Directors of the Foundation shall be the representative body of the Foundation and therein shall be vested the entire management of the operations and affairs of the Foundation as described more specifically in Section 5 below. The number of members of the Board of Directors shall be determined by the Board of Directors immediately prior to the election of the members of the Board; provided; however, the Board of Directors shall consist of a minimum of eighteen individuals (excluding ex-officio members). Such individuals serving on the Board of Directors shall not be employees of the University. Members of the Board shall be provided for as set forth below:

(a) Five members shall serve as ex-officio, nonvoting members: (1) the Chairman of the Board of the Spartanburg County Commission for Higher
Education, (2) the Chancellor of the University (3) the Executive Director of the USC Upstate Foundation, (4) the faculty representative, and (5) a member of the USC Upstate Alumni Association. Ex-officio members of the Board shall have all rights and privileges of other members of the Board, except voting.

(b) The Board may, at its discretion, elect Directors from across the Upstate region of South Carolina. At least three of the Members shall be from the Greenville, South Carolina area.

The appointees duly nominated shall be elected by a majority of the members of the Board of Directors present and voting at any regular or special meeting.

(c) 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 the Upstate region of South Carolina. The Foundation also seeks to have broad representation from its partnership boards, alumni, and other organizations supportive of the University, but shall not designate any specific seats for such representation.

Section 2. **METHOD OF SELECTION.** Unless a separate Nominating Committee is established by the Board of Directors, the Board of Governors or its designee shall serve as the Nominating Committee for all directors except the four ex-officio directors. The Nominating Committee shall actively seek nominations for membership from the current Board of Directors, from the University administration, partnership boards, and other supportive organizations. The Nominating Committee shall select and present candidates for Board membership to the Board of Directors, and they shall be elected by a majority of the members of the Board of Directors present and voting at a regular or annual meeting of the Board, and their terms shall commence on the following July 1.

Section 3. **TENURE.** Other than ex officio, all Board of Directors members shall serve for terms not to exceed three years; and may be elected to succeed themselves for one additional term. Members are eligible for re-election after having been off the Board of Directors for a period of two years. A Board member, however, may serve two successive complete terms in the case of having been originally elected to the Board to fill an unexpired or partial term. If a Director fails to attend (in person or by telephone conference call) at least 50 percent of all regular meetings of the Board during the first term they shall not be eligible for a second term unless the it is determined that extenuating circumstances prevented the attendance. The term of a Board member serving as an officer or Committee Chair may be extended as long as the member serves in the current position or is elected to another office or chairmanship.
Section 4. **VACANCIES.** A vacancy on the Board of Directors shall be deemed to have occurred in the event of the expiration of a term of service, death, disability, lack of attendance at meetings without excuse, resignation or removal of any member of the Board of Directors. When a vacancy occurs, the new board member(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 member of the Board of Directors may resign; provided, however, such resignation must be in writing and delivered to the Board of Directors, the Executive Director, or the President of the USC Upstate Foundation. Such resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

Section 5. **GOVERNING BODY.** The Board of Directors shall be the governing body of the Foundation, and the entire management of the business and affairs of the Foundation shall be vested therein, including but not limited to formulation of policy in accordance with the purposes of the Foundation. In addition, the Board of Directors shall maintain (i) accurate and complete books and records of account; (ii) custody and responsibility for the property and funds of the Foundation; and (iii) control over the Foundation's bank account(s). The Board of Directors shall select a certified public accountant to audit the Foundation's books of account at least once a year and prepare a report (the "Audit Report") for the Foundation. The Board of Directors shall establish operating guidelines for the selection of bank(s) or other depository(ies) wherein shall be deposited and maintained all contributions, donations, dues, or other monies accepted by the Foundation.

Section 6. **MEETINGS.**

(a) **Chairman of Meetings.** The President or the Vice President, in the absence of the President, of the Foundation shall conduct all meetings of the Board of Directors and the Board of Governors, and notice of such meetings shall be given in accordance with this Section by or at the direction of the President or Secretary of the Foundation.

(b) **Regular Meetings.** Regular meetings of the Board of Directors or Board of Governors shall be held on such date, time and place as shall be determined. 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.

(c) **Special Meeting.** Special meetings of the Board of Directors or Board of Governors may be called by the President alone, or by the President at the request of at least three (3) of the members of the Board of Directors or Board of Governors. 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.
(d) **Actions Requiring Additional Notice.** A Board of Directors action to remove a Member is not valid unless each member 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 this Section.

(e) **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, telegraph, email, facsimile transmission, or other form of wire or wireless communication; or by mail or private carrier including specifically campus mail of the University.

(f) **Oral Notice.** Oral notice, if reasonable under the circumstances and communicated in a comprehensible manner, is effective when communicated. Oral notice also includes notice through broadcast transmission.

(g) **Waiver of Notice.** A Member may waive any notice required by these Bylaws, the Articles, or applicable law. The waiver must be in writing, signed by a Member entitled to notice, and filed with the Foundation records or minutes, and may be executed either before or after the event requiring notice. A Member's attendance at or participation in a meeting waives any required notice unless the Member, 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.

(h) **Emergency Meetings.** If the President determines that an emergency meeting of the Board of Directors is required to conduct urgent business within a time frame that does not permit satisfaction of the notice requirements of this Section, the notice requirements shall be waived; provided, however, that the President shall make a good faith effort to notify each member of the Board of Directors it is practicable to reach regarding the date and hour of such emergency meeting, and the President may give such notice by whatever means are practicable under the circumstances, including facsimile, telegraph, telephone, publication, and radio. If a quorum cannot be assembled because of the emergency, the Board of Directors 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.

(i) **Consent Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all the members of the Board of Directors. The action must be evidenced by one or more written consents describing the action taken, signed by each member of the Board of Directors, and included in
the minutes of the Foundation filed with the corporate records reflecting the action taken. The action is effective when the last member 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.

(j) **Telephonic/Electronic Meeting.** Unless otherwise provided in these Bylaws, any or all members may participate in a meeting of the Board of Directors or 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.

Section 7. **QUORUM.** At any meeting of the Board of Directors, at least one half of the total number of voting members of the Board of Directors authorized to serve shall constitute a quorum for the transaction of Foundation business, but in no event shall less than nine voting members constitute a quorum. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members of the Board of Directors present at a meeting shall be the act of the Board of Directors. The members of the Board of Directors present at a meeting may not continue to do business if enough Directors withdraw to leave less than a quorum, but the Directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of such adjournment until another date, time and place shall be given to any members of the Board of Directors not present, and, unless announced at the meeting, to the other members of the Board of Directors. At any meeting of the members of the Board of Directors, each Director shall be entitled to vote on any issue.

Section 8. **GUIDELINES.** The Board of Directors may authorize, amend or restate operating guidelines, plans, practices and procedures from time to time in order to effectively implement the purposes of the Foundation.

Section 9. **PERSONNEL.** The Board of Directors may hire such personnel as it sees fit for the administration of its duties. Personnel shall receive such compensation as the Board of Directors shall determine and shall serve for such time as the Board of Directors in its sole discretion shall determine.

Section 10. **BOND FOR PERSONNEL.** Such persons as the Board of Directors may determine shall give such bond as may be required by the Board of Directors 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 of Directors and expenses for same shall be borne by the Foundation.
ARTICLE V – OFFICERS

Section 1. **NUMBER.** Officers shall be a President, Vice President, Secretary, Treasurer, and the Executive Director, 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. An officer may serve as a Committee Chair. The officers shall be elected by and from the Board of Directors.

Section 2. **METHOD OF SELECTION.** Unless a separate Nominating Committee is established by the Board, the Board of Governors shall serve as the Nominating Committee for the officers. All officers are nominated by the Nominating Committee, and shall be elected by a majority of the members of the Board of Directors present and voting at a regular or annual meeting.

Section 3. **TENURE.** All officers shall serve for two (2) years or until a successor has been duly elected or appointed in accordance with this Article. Officers are eligible for re-election to one additional term to that office, except for the Executive Director who shall serve as *ex-officio*. 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 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 the members of the Board of Directors to the office that may be or become vacant. An officer, whose regular term as a director expires before the term of office expires, shall remain an active member of the Board of Directors and may be re-elected to an office.

Section 4. **DUTIES.** The officers shall perform such duties as are ordinarily incumbent upon their positions, and such other duties as may from time to time be determined by the Board of Directors.

Section 5. **CUSTODY AND MANAGEMENT OF FUNDS.** The Board of Directors shall designate an appropriate custodian or custodians of its funds and qualified investment counsel.

Section 6. **EXECUTIVE DIRECTOR.** The Vice Chancellor of Advancement for the University of South Carolina Upstate shall also serve as the Executive Director of the USC Upstate Foundation, Inc.

Section 7. **DUTIES.** The Executive Director of the Foundation shall be responsible for properly carrying out the plans and purposes of the Board of Directors as the President of the Board shall direct. The Executive Director shall receive such compensation as the Board of Directors may decide and shall be held responsible for expending of and accounting for any operating funds appropriated in accordance with Article VII, Section 3.
In addition the Executive Director (i) shall keep the seal of the Foundation, as well as the minutes of all proceedings of the Foundation, including meetings of the Board of Directors and the Board of Governors in one or more books provided for such purpose; (ii) shall maintain a Membership roster; (iii) shall prepare and file such reports as may be required by federal, state, and local laws and regulations; (iv) shall be responsible for assuring that all funds of the Foundation are in the proper custody, that correct and complete records of account are kept by the Foundation, and that such financial reports as may be appropriate are presented to the Board of Advisors, the Board of Governors, the University; and (v) shall authenticate records of the Foundation.

Section 8. **SIGNATORY AUTHORITY.** All deeds, contracts and other legal instruments shall be signed by the Executive Director, the Chancellor, or other duly authorized individuals of the Foundation, in accordance with such operating guidelines 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.

**ARTICLE VI – BOARDS and COMMITTEES**

Section 1. **COMMITTEES.**

(a) **Committees.** The standing committees of the Board of Directors shall be the Nominating Committee and the Financial Management Committee. The membership and duties of these committees are set forth below. The President of the Foundation shall be a member, ex-officio, of each such committees and shall appoint the chairman of each committee (the “Chairman”) from the membership of the Board of Directors. The Chairman shall serve on the committee for the duration of his term on the Board 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 provided in the case of original appointment. Except as specified below with respect to the Board of Governors, the greater of fifty percent of members of any Committee or two persons shall constitute a quorum and a vote of all of the members present at a meeting at which a quorum is present shall be the act of the Committee.

(1) **Powers.** A committee may exercise the powers and duties delegated to it by the Board of Directors except that a committee may not be empowered to do any of the following: (1) authorize
distributions; (2) approve or recommend to Directors the
dissolution, merger, or the sale, pledge, or transfer of all or
substantially all of the Foundation's assets; (3) select, appoint, or
remove members or fill vacancies on the Board of Directors or on
any of its committees; or (4) adopt, amend, or repeal the
Foundation's Bylaws or Articles.

(b) **Other Committees.** In accordance with this Section, the Board of
Directors may establish such other committees as they may determine,
and which shall have such powers and duties as shall from time to time
be prescribed by the Board of Directors, in accordance with the Bylaws.
Such committees shall have as members at least three (3) Directors who
shall serve at the pleasure of the Board of Directors. The creation of a
committee shall be approved by the greater of: (1) a majority of the
Board in office when the action is taken; or (2) the number of members
required to take action, as set forth in these Bylaws.

Section 2. **Board of Governors.** The Board of Governors shall be composed of the President,
Vice President, Secretary, Treasurer, Executive Director, and six (6) members
selected from the Board of Directors. Five members of the Board of Governors
shall constitute a quorum and a vote of a majority of the members present at a
meeting at which a quorum is present shall be the act of the Board. The Board
of Governors shall exercise immediate supervision over the operation of the
Foundation and shall address such matters that may arise between meeting dates
of the Board of Directors, unless a special Board of Directors meeting is called
to address such problem or question. The Board of Governors shall exercise
full administrative authority and shall possess all the powers and duties of the
Board of Directors in the interim between meetings, except as limited by these
Bylaws or by the specific instructions of the Board of Directors. After the Board
of Governors has taken an action, the Board of Governors shall report such
action at the next Board of Directors meeting, and following approval by the
Board of Directors, such action shall be deemed an action of the Board of
Directors. In addition to the limitations on committees set forth above, the
Board of Governors shall not have power to remove any officers elected by the
Board of Directors.

Section 3. **MEMBERSHIP OF OTHER STANDING COMMITTEES.** The Nominating
Committee and the Financial Management Committee shall be composed of
members of the Board of Directors, and all being appointed by the President of the
Foundation.

Section 4. **DUTIES OF FINANCIAL MANAGEMENT COMMITTEE.**
It shall be the duty of the Financial Management Committee to:

a) **Oversee funds of the Foundation.** It shall receive and study proposals
regarding the needs of the University that might be met by this Foundation
and make recommendations to the Board on these matters as well as on the annual budget.

b) 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.

c) Make recommendations relevant to the mutual understandings and policies between the University and the Foundation.

d) 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.

e) Establish a written investment policy 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.

f) Hire, as it deems necessary, investment consultants and investment managers to assist in these duties.

Section 5. ADVISORY COMMITTEES. Each member of the Board of Directors will be asked to serve on either a standing committee or an advisory committee. Advisory committees will be associated with either a college or school at the university, the library, or international programs, the purpose of which is to engage each member with the campus community and serve as “community ambassadors” for the university. These advisory committees will be directed by a campus administrator (dean or department head).

ARTICLE VII – FINANCES

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 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.
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 a fiscal year basis, with such fiscal year ending on a date to be determined in the sole discretion of the Board of Advisors. The period of existence of the Foundation shall be perpetual unless terminated in accordance with the dissolution provisions set forth in Article III.

**ARTICLE VIII – MEMBERSHIP**

Section 1. **QUALIFICATIONS OF MEMBERS.**

(a) **Composition.** Membership in the Foundation shall consist of the members of the Board of Directors of the Foundation (the “Members”). A person shall cease to be a Member if such person is either no longer a member of the Board of Directors, or if such person’s Membership is revoked by the Board of Directors pursuant to Article VIII, Section 1(c).

(b) **Duties and obligations.** All Members shall have the same rights with respect to voting and other rights and obligations. Membership shall not be assigned, transferred, pledged or hypothecated. Service on a standing or advisory committee is required.

(c) **Termination.** The Membership of any Member of the Foundation may be terminated upon revocation of Membership by the Board of Directors pursuant to the procedure set forth in S.C. Code § 33-31-621. A Member may resign at any time.
Section 2. **MEETINGS OF MEMBERS.**

(a) **Chairman of Meetings.** The President of the Foundation shall conduct all meetings of the Directors of the Foundation, and notice of such meetings shall be given in accordance with this Section by or at the direction of the President or Secretary of the Foundation.

(b) **Annual Meeting.** The annual meeting of the Directors shall be held on such date, time and place as the Board of shall determine. 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 date of the meeting. The notice of the annual meeting need not specifically state the business to be discussed at the meeting.

(c) **Special Meetings.** Special meetings of the Members may be called by the Board of Directors, the President of the Foundation, or twenty percent (20%) of the Members. Notice of the date, time and place of each special meeting shall be given no fewer than ten (10) days nor greater than sixty (60) days before the date of the meeting (if given by first class or registered mail) and shall state the purpose or purposes for which the meeting is called.

(d) **Form of Notice.** Notice shall be given in writing unless oral notice is reasonable under the circumstances. Notice may be communicated in person; by mail or private carrier, including specifically campus mail of the University, by email, telephone, telegraph, teletype, fax, or other form of wire or wireless communication; or by any other lawful means.

(e) **Oral Notice.** Oral notice, if reasonable under the circumstances and communicated in a comprehensible manner, is effective when communicated.

Section 3. **QUORUM AND PROXIES.**

(a) **Quorum.** Except as otherwise provided by law or these Bylaws, a majority of the Membership, represented in person or by proxy, shall constitute a quorum for action on any matter before the Membership.

(b) **Proxies.** A Member may vote in person or by proxy. A Member may appoint only another Member to act as a proxy to vote or otherwise act for him including giving waivers and consents, by signing an appointment form either in person or by his attorney in fact. An appointment of a proxy shall be effective when received by the Secretary of the Foundation or other officer or agent authorized to tabulate votes.
Section 4. **VOTING.**

(a) **One Vote.** Except as otherwise provided in these By-laws, each Director of the Foundation shall be entitled to one vote for each matter required by South Carolina law to be voted on by members of a South Carolina nonprofit corporation. If a quorum exists, action on a matter by the Members shall be approved if the votes cast favoring such action exceeds the votes cast opposing such action.

(b) **Telephonic Meetings.** Unless otherwise provided in these Bylaws, any or all Directors may participate in a meeting 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.

(c) **Action Without Meeting.** Any action required or permitted to be taken at a meeting of the Directors, including the annual meeting, may be taken without a meeting if the action is taken by eighty percent (80%) of all Directors entitled to vote. The action must be evidenced by one or more written consents describing the action taken, signed by the Director, and included in the minutes of the Foundation reflecting the action taken. The action is effective when the last Director signs the consent, unless the consent specifies a different effective date, which effective date may not be more than ten (10) days after notice of Directors approval is given pursuant to this section. A consent signed under this provision has the effect of a meeting vote and may be described as such in any document.

**ARTICLE IX – AMENDMENTS**

Section 1. **AMENDMENTS.** Amendments to these Bylaws shall be adopted by two-thirds (2/3) vote of the members present or voting by proxy at any regular meeting after written notice of such meeting has been given to each member at least ten (10) days prior to the action on such amendment or amendments.

**ARTICLE X – INDEMNIFICATION**

Section 1. **LIABILITY TO FOUNDATION.** 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 an, officer or Member of the
Foundation in good faith, if such person acted in accordance with his duties as set forth in these Bylaws.

Section 2. **INDEMNIFICATION.**

(a) The Foundation may indemnify a Director or officer of the Foundation made party to a proceeding because the individual is or was a Director, or officer against liability incurred in the proceeding if the Director, or others (i) conducted himself in good faith and (ii) reasonably believed (1) in the case of conduct in his official capacity with the Foundation, that his conduct was in its best interest; and (2) in all other cases, that his conduct was at least not opposed to its best interest and (iii) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) The Foundation may not indemnify any person (i) in connection with a proceeding by or in the right of the Foundation in which such person was adjudged liable to the Foundation or (ii) in any other proceeding charging improper personal benefit, whether or not involving action in his official capacity, in which such person was adjudged liable on the basis that the personal benefit was improperly received by such person.

(c) The Foundation may also reimburse any such officer or Director for the reasonable cost of the final disposition of any action, suit, or proceeding, if such person (i) furnishes the Foundation a written affirmation of his good faith belief that he has met the standards of conduct described in Section 2, paragraph (a) above, (ii) 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, and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under South Carolina law.

Section 3. **ADDITIONAL RIGHTS.** The rights of indemnification provided in this Article shall be in addition to any rights to which any such officer or Director may otherwise be entitled. Irrespective of the provisions of this Article, the Board of Directors may, at any time and from time to time, approve indemnification of directors, officers, members, 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 4. **DIRECTOR AND OFFICER INSURANCE.** The Board of Directors is authorized and empowered to purchase insurance covering the Foundation's liabilities and obligations under this Article and insurance protecting the Foundation's officers, members and employees.
ARTICLE XI – REGULATION AND LAW

Section 1. SUBJECT TO REGULATORY AUTHORITY. 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 thereof, and the regulations thereunder, as the case may be as heretofore or hereafter amended or supplemented or as superseded by laws covering equivalent subject matter.

Section 2. GOVERNING LAW. 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 Upstate Foundation were duly adopted by the Board of Directors of the Foundation at a Meeting of the Board of Advisors held on June 24, 2010.

Dated: ________________________ ________________________

Secretary, USC Upstate Foundation, Inc.

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President, USC Upstate Foundation, Inc.