



## AMENDED AND RESTATED BYLAWS OF THE UNIVERSITY OF SOUTH DAKOTA FOUNDATION

Adopted: May 3, 1997, and as amended September 25, 1998, May 20, 2000, October 12, 2001, October 6, 2006, October 1, 2010, October 9, 2014, October 2, 2015, October 7, 2016, October 6, 2017, October 5, 2018, October 4, 2019, and October 21, 2022.

Pursuant to the South Dakota Nonprofit Corporation Act and the Articles of Incorporation, the Trustees of The University of South Dakota Foundation hereby amend and restate the bylaws of The University of South Dakota Foundation to provide as follows:

### ARTICLE I

#### Names and Offices

- 1.1 Name. The name of this corporation is The University of South Dakota Foundation (the “Foundation”).
- 1.2 Offices. The principal office of the Foundation shall be located at Vermillion, South Dakota. The Foundation may also have offices at such other places as the Board of Directors may from time to time establish.

### ARTICLE II

#### Members and Meetings of Board of Trustees

- 2.1 Membership. The members of this corporation shall be known as Trustees. Membership shall be open to all alumni and other friends of the University of South Dakota (“USD” or “University”). Trustees may be elected, ex-officio or honorary. No employee of USD or the Foundation may serve as an elected Trustee during the period of his or her employment.
- 2.2 Nomination of Elected Trustees. At least ninety days prior to the fall meeting of the Trustees, the Governance-Executive Committee shall submit to the Foundation president the names of the persons nominated to serve as elected Trustees. In addition, a person may be nominated to serve as an elected Trustee by a petition signed by at least five elected Trustees and delivered to the Foundation president on or before the date of the fall meeting of the Trustees. Nominees by petition will become elected Trustees upon an affirmative majority vote of the elected Trustees present or represented by proxy at the fall meeting at which there is a quorum.

- 2.3 Ex-Officio Trustees. The following persons shall be ex-officio non-voting Trustees by virtue of their office: President of the University of South Dakota and all Vice Presidents and Deans of the University of South Dakota.
- 2.4 Honorary Trustees. In addition, the ~~Governance-Executive~~ Committee may nominate persons as lifetime honorary non-voting Trustees in recognition of past meritorious service to the Foundation. A person will usually be nominated as an honorary Trustee only after he or she has served at least one full term as an elected Trustee.
- 2.5 Election of Trustees. The Foundation president will submit the names of each person nominated to serve as an elected or honorary Trustee, as provided in sections 2.2 and 2.4 above, to the Trustees by mail or electronic means at least sixty days prior to the fall meeting of the Trustees. The Trustees will vote for the candidates by mail or electronic means within thirty days after receiving such names. A majority vote of the Trustees voting will elect an elected Trustee or approve an honorary Trustee.
- 2.6 Term of Office. The term for each elected Trustee shall be three years. Terms will begin at the start of the fall meeting of the Trustees in the year in which the Trustee was elected and end at the conclusion of the fall meeting of the Trustees three years thereafter. There is no limit on the number of consecutive terms that a person may serve as an elected Trustee.
- 2.7 Rights of Trustees. The Trustees shall elect Trustees and members of the Board of Directors and transact any other business that shall come before them at any regular or special meeting of the Trustees. It is the policy of the Foundation to encourage family participation in all of the activities of the Foundation. To that end, both persons of a marriage or domestic partnership are encouraged to attend and participate in all Trustee meetings and other functions of the Trustees; however, only the elected Trustee may vote.
- 2.8 Duties of Trustees. The Trustees have the unique responsibility and privilege of supporting the University through their charitable contributions. In addition, Trustees can influence others to contribute financially to the University. While the primary and most visible commitment is financial, Trustees also are strong advocates that build enthusiasm, loyalty and pride among alumni.
- 2.9 Regular Meetings. The annual regular meetings of the Trustees will normally be held in conjunction with Dakota Days on the USD Vermillion campus (the “fall meeting”). At such regular meetings, the Trustees will elect members of the Board of Directors, be provided with updated information about USD and the Foundation’s activities and given an opportunity to participate in the work of the Foundation.

- 2.10 Special Meetings. Special meetings of the Trustees may be called at any time by the Foundation chair. In addition, special meetings of the Trustees must be called within ten days after receipt by the Foundation chair, president or secretary-treasurer of the written request of at least ten percent of the elected Trustees stating the purpose of such special meeting.
- 2.11 Notice of Trustee Meetings. Notice of the date, time and place of any meeting of the Trustees, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each Trustee not less than ten nor more than fifty days before the meeting.
- 2.12 Quorum. At any meeting of the Trustees, the presence in person or by proxy of ten percent of the elected Trustees shall be necessary to constitute a quorum for all purposes. In the absence of a quorum, or with cause when a quorum is present, a meeting may be continued from time to time by vote of a majority of the Trustees present, without notice other than by announcement at the meeting and without further notice to any absent Trustee. At any resumption of a continued meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting for which notice was originally given. Any action taken by the Trustees at a meeting at which no quorum was present must be ratified at the next meeting of Trustees at which a quorum is present.
- 2.13 Voting. At every meeting of the Trustees, each elected Trustee shall be entitled to vote. Proxy voting is permitted. All elections shall be held and all questions decided by a majority vote of the Trustees present or represented by proxy at any meeting at which there is a quorum; provided, however, that any amendments to or restatement of these bylaws must receive a two-thirds majority vote as is required by Article XIV.
- 2.14 Compensation and Expenses. Trustees, as volunteers, shall not receive any salary for their services as Trustees nor any reimbursement for expenses of attendance at meetings; provided, however, that the Foundation chair shall have power in his or her discretion to budget for and pay such expenses.
- 2.15 Resignation of Trustees. Any Trustee may resign from membership by sending a written resignation to the Foundation chair or president.
- 2.16 Removal of Trustees. Any Trustee may be removed from membership by the affirmative vote of two-thirds of the Trustees at any regular meeting of the Trustees or at a special meeting called for that purpose. Action to remove a Trustee may be taken only after the individual has been given notice of the reason for the proposed removal and had an opportunity to respond to the Trustees.

**ARTICLE III**  
**Board of Directors**

3.1 **Board of Directors.** The Foundation shall be governed and controlled by a Board of Directors. The Board of Directors shall consist of the Foundation's officers listed in section 4.1, elected voting members, appointed voting members, and ex-officio non-voting members as set forth in section 3.2.3. Each voting officer and elected and appointed member of the Board of Directors shall be an elected Trustee of the Foundation.

3.2 **Membership.**

1. **Elected Members.** The Trustees will normally elect to the Board of Directors up to eighteen members, each serving three-year terms as provided in section 3.11. The election of new members and reelection of members to a second term shall take place at the fall meeting of the Trustees. The complete slate of candidates for election shall be submitted by the ~~Governance~~Executive Committee to the Trustees no fewer than ten days in advance of the fall meeting. The ~~Governance~~Executive Committee will endeavor to maintain, as it deems prudent and practicable, balanced classes of elected members so that approximately six members are elected or reelected each year. Additional nominations may be made from the floor by any Trustee.

2. **Appointed Members.** At any time throughout his or her term, the Foundation chair may appoint from among the elected Trustees up to three members to serve on the Board of Directors, each of whom will be subject to approval at the next regular meeting of the Board of Directors. Appointed members of the Board of Directors shall serve until the conclusion of the term of the Foundation chair who appointed such member.

3. **Ex-officio Non-Voting Members.** The following persons shall be ex-officio non-voting members of the Board of Directors:

- a. The President of the University of South Dakota.
- b. The President of the Foundation.
- c. The General Counsel of the Foundation.
- d. A representative designated by the National Music Museum.
- e. The secretary-treasurer of the Foundation.
- f. The chair or designated representative from other USD-affiliated groups or organizations that, by determination of the Board of Directors, might advance the work of the Foundation.

3.3 **Resignation or Removal.** Any member of the Board of Directors may resign at any time by giving written notice of such resignation to the Foundation chair or president. Any member of the Board of Directors who fails to attend three consecutive regular meetings of the Board of Directors without good cause (as

determined by the Foundation chair) shall be deemed to have resigned from the Board of Directors.

In addition, any member of the Board of Directors may be removed from membership by the affirmative vote of two-thirds of the Board of Directors at any regular meeting of the Board of Directors or at a special meeting called for that purpose. Action to remove a member of the Board of Directors may be taken only after the individual has been given notice of the reason for the proposed removal and had an opportunity to respond to the Board of Directors.

- 3.4 Vacancies. If there is a vacancy of an elected or appointed member of the Board of Directors, the Foundation chair may, after consultation with the [Governance Executive](#) Committee, appoint a person to fill the unexpired term. Such appointment must be approved at the next meeting of the Board of Directors. Any member so appointed shall hold office until the end of the unexpired term to which he or she was appointed.
- 3.5 Regular Meetings. The Board of Directors will normally have three regular meetings during each calendar year, one of which shall be held in conjunction with Dakota Days but before the fall meeting of the Trustees.
- 3.6 Special Meetings. Special meetings of the Board of Directors may be called by the Foundation chair. In addition, such special meetings must be called by the Foundation chair, president or secretary-treasurer on the written request of any eight voting members of the Board of Directors.
- 3.7 Notice and Place of Special Meeting. Notice of all special Board of Directors meetings, except as herein otherwise provided, shall be given at least seven days before the meeting to each member of the Board of Directors. Any business, except as otherwise constrained by state statute or these bylaws, may be transacted at any special meeting of the Board of Directors.
- 3.8 Quorum. At all meetings of the Board of Directors, the presence either in person or by proxy of a majority of the voting members shall constitute a quorum for the transaction of business. Proxy voting is permitted. The act of a majority of the voting Board of Directors members present or represented by proxy at any meeting at which there is a quorum shall be the act of the Board of Directors. If at any meeting there is less than a quorum present, a majority of the voting members present may continue the meeting from time to time without further notice to any absent member. All actions taken by the Board of Directors at a meeting at which no quorum was present must be ratified by a majority vote of the Board of Directors at any subsequent meeting of the board at which a quorum is present. At any resumption of a continued meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting for which notice was originally given.

- 3.9 Compensation. Members of the Board of Directors, as volunteers of the Foundation, shall not receive any salary for serving on the board nor any reimbursement for expenses of attendance at meetings. However, the Foundation chair shall have power in his or her discretion to budget for and pay such expenses.
- 3.10 Powers. All of the corporate powers, except such as are otherwise provided for in these bylaws and by the laws of the State of South Dakota, shall be and are hereby vested in and may be exercised by the Board of Directors. The Board of Directors may, by general resolution, delegate to committees or to officers of the Foundation such powers as they may see fit.
- 3.11 Term of Office. The term of office for elected Board of Directors members shall be for three years, commencing at the conclusion of the fall meeting of the Trustees at which the director was elected. The terms of the Board of Directors members shall be staggered so that approximately six members will be elected or reelected each year. No person may be elected to more than two consecutive three-year terms on the Board of Directors. Service on the Board of Directors as an appointed member pursuant to section 3.2 or as an elected member to fill out an unexpired term pursuant to section 3.4 or any other partial term shall not count against such term limit. A person who has served two consecutive elected three-year terms on the Board of Directors may be immediately appointed to the Board of Directors pursuant to section 3.2 or may return and serve again as an elected member of the Board of Directors after an absence of at least one year.
- 3.12 Closed Session. The voting members of the Board of Directors or of any committee established under the authority of the Board of Directors or these bylaws may hold a closed session by the affirmative vote of a majority of its voting members present. The vote to hold a closed session shall be taken in open session.

#### **ARTICLE IV** Officers

- 4.1 Number. The officers of the Foundation shall be the vice-chair-elect, vice chair, chair, immediate past chair, president, secretary-treasurer and such other officers with such titles and duties as shall be determined by the Board of Directors from time to time.
- 4.2 Election, Term of Office, and Qualifications. The Board of Directors shall elect from among its elected members a vice-chair-elect who will automatically succeed to the offices of vice chair, chair and immediate past chair. Any member of the Board of Directors may nominate a person to serve as vice-chair-elect, and a majority vote of the members of the Board of Directors voting is required to elect. If no candidate receives a majority vote, the voting will continue until a candidate receives a majority vote. Proxy voting is permitted. The term of office for vice-chair-elect may vary as the Board of Directors deems appropriate, but

shall in no case exceed two years. The terms of office for vice chair, chair and immediate past chair shall be two years. Succession to the offices of vice chair, chair and immediate past chair shall occur in an applicable year at the conclusion of the fall meeting of the Trustees. Persons elected as vice-chair-elect or automatically succeeding to the positions of vice chair, chair or immediate past chair are officers of the Foundation and therefore shall not be subject to the term limits on elected Board of Directors members in section 3.11. If the person elected vice-chair-elect has time remaining in his or her term as an elected Board of Directors member, that remaining term shall be deemed vacant and shall be filled in accordance with section 3.4.

- 4.3. Vacancies. If the position of chair shall become vacant, the vice chair shall automatically become chair for the unexpired term and shall also serve his or her full two-year term as chair thereafter. If the position of vice chair becomes vacant, the vice-chair-elect, if any, shall become the vice chair. If no vice-chair-elect is in place at the time the vice chair position becomes vacant, the Board of Directors shall elect a new vice chair and, if appropriate, vice-chair-elect in accordance with Section 4.2.
- 4.4. Chair. The chair shall preside at all meetings of the Board of Directors and of the Trustees and shall have and possess all of the powers and duties ordinarily incident to that office or that may be assigned to the office by the Board of Directors. In addition, the chair shall be an ex-officio voting member of all committees.
- 4.5. Vice Chair. The vice chair shall act on behalf of and carry out all of the duties of the chair in the absence of the chair so to act and shall have and possess all of the powers and duties ordinarily incident to the office or that may be assigned to the office by the Board of Directors. In addition, the vice chair shall be an ex-officio voting member of all committees.
- 4.6. Vice-Chair-Elect. The vice-chair-elect shall act on behalf of and carry out all of the duties of the chair in the absence of both the chair and the vice chair so to act and shall have and possess all of the powers and duties ordinarily incident to the office or that may be assigned to the office by the Board of Directors. In addition, the vice-chair-elect shall be an ex-officio voting member of all committees.
- 4.7. Immediate Past Chair. The immediate past chair shall act on behalf of and carry out all of the duties of the chair in the absence of the chair, vice chair and vice-chair elect so to act and shall have and possess all of the powers and duties ordinarily incident to the office or that may be assigned to the office by the Board of Directors.
- 4.8. President. The Board of Directors shall appoint a president who shall have and exercise general charge and supervision of the affairs of the Foundation and shall do and perform such other duties as may be assigned to the office by the Board of

Directors. The president shall function as the chief executive officer of the Foundation. The president shall devote full time to the affairs of the Foundation and shall receive such salary and have such term of office as determined by the Board of Directors.

- 4.9 Secretary-Treasurer. The Board of Directors shall appoint a secretary-treasurer who shall have official charge of such books, documents, and records as the Board of Directors may determine, and shall attend and keep, or cause to be kept, minutes of all meetings of the Board of Directors and the Trustees, with the assistance of designated Foundation staff. The books and records of the Foundation shall be open for inspection as prescribed by law. The secretary-treasurer may serve as an official signatory of the Foundation, in addition to the chair, vice chair, or president, and may sign checks of the Foundation except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the Foundation. He or she shall, in general, perform all the duties incident to the office of secretary-treasurer, subject to the control of the Board of Directors.
- 4.10 General Counsel. The Board of Directors may appoint a general counsel who must be an active member of the State Bar of South Dakota. The duties, compensation, if any, and term of office of the general counsel shall be determined from time to time by the Board of Directors.

## **ARTICLE V**

### Committees

- 5.1 Standing Committees. The Board of Directors, by resolution, may designate one or more standing committees. The purpose, membership, authority, and responsibilities of each standing committee shall be set forth in a governing charter for each such committee that will be adopted by the directors and may be amended from time to time. The Board of Directors will normally maintain an Executive Committee and such other committees as may be required to oversee Foundation governance, audit, finance, investment, fundraising, and alumni engagement activities.
- 5.2 Ad Hoc Committees. In addition, the Foundation chair may from time to time appoint ad hoc committees for special purposes.

## **ARTICLE VI**

### Agents and Representatives

- 6.1 The Board of Directors may appoint such agents and representatives of the Foundation, with such powers and to perform such acts or duties on behalf of the Foundation as the Board of Directors may see fit, so far as may be consistent with these bylaws and to the extent authorized or permitted by law.



- 6.2 The Board of Directors except as otherwise provided in these bylaws, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Foundation by any contract or engagement, or to pledge its credit, or render it liable pecuniary for any purpose or to any amount.

## **ARTICLE VII**

### **Fiscal Year**

- 7.1 The fiscal year of the Foundation shall commence on January 1 of each year and end on December 31.

## **ARTICLE VIII**

### **Prohibition Against Sharing in Corporate Assets**

- 8.1 No Trustee, Board of Directors member, officer, or member of a committee of, or person employed by or otherwise connected with the Foundation, shall be entitled to share in the distribution of any of the corporate assets upon the termination or dissolution of the Foundation.
- 8.2 Upon the termination or dissolution of the Foundation, all of its remaining assets shall be distributed to or for the benefit of the University of South Dakota. However, if the University of South Dakota is not then in existence or no longer a qualified distributee or unwilling or unable to accept the distribution, such assets shall be distributed to a fund, foundation or corporation organized and operated in South Dakota exclusively for the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

## **ARTICLE IX**

### **Policy Statements**

- 9.1 As a condition of their service, all members of the Board of Directors and any other Trustees serving on any standing committees shall sign and be bound by detailed policy statements on conflicts of interest, whistleblowing and similar ethical and legal matters in forms approved by the Board of Directors.
- 9.2 All Investments (as the term is defined in the Statement of Investment Objectives and Policies (the "Investment Statement")) of Foundation assets shall comply with the Investment Statement.

## **ARTICLE X**

### **Electronic Communications, Notices and Proxies**

- 10.1 Members of the Board of Directors or of any of the standing or ad hoc committees appointed by the Board or the Foundation chair may attend and participate in any meeting of such board or committee, as the case may be, by means of a conference telephone call or other electronic means by which all persons participating in the meeting can hear each other at the same time. Attendance and participation of telephonic or other electronic means shall be subject to the provisions of these bylaws for notification of members of the Board of Directors or committee of such meeting and shall constitute presence in person at the meeting for all purposes, including that of a quorum. Written minutes of all actions taken at such meeting shall be circulated to all members of the Board of Directors or committee, as the case may be.
- 10.2 Written notices required by these bylaws may be given by any reasonable means, including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile. Notices of meetings shall state the place, day, and hour of the meetings and, in the case of a special meeting, the purpose of the meeting. Any person entitled to a notice under these bylaws may elect to waive such notice, either in writing or by attending a meeting for which such notice was required to be given.
- 10.3 Where proxy voting is permitted by these bylaws, the proxy must be in writing, signed by the person granting the proxy, naming the person authorized to vote the proxy, stating the duration of the proxy and any limitation on the matters for which the proxy can be voted and provided to the Foundation president prior to the voting of the proxy. Unless otherwise specifically stated in the proxy, the proxy is limited to (1) establishing a quorum, and (2) voting on matters described with particularity in a written agenda for the meeting provided to the person granting the proxy before the proxy is granted. Any proxy may be revoked by written notice to the Foundation president and is automatically revoked by the attendance of the person granting the proxy at the meeting in question.

## **ARTICLE XI** Exempt Activities

Notwithstanding any other provision of these bylaws, no Trustee, member of the Board of Directors, officer, employee or other 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 hereafter be amended.

## **ARTICLE XII** Defense and Indemnification

The Foundation shall defend and indemnify each Trustee, Director, officer or employee of the Foundation against any action, suit or proceeding arising by reason of the fact that such person was a Trustee, Director, officer or employee of the Foundation to the full

extent that such defense and indemnification is permitted pursuant to the provisions of the South Dakota Nonprofit Corporation Act. It is recognized and understood, however, that by reason of the provisions of SDCL 47-22-65.3, any such indemnity must be further authorized in connection with any specific case as provided in SDCL 47-22-65.3.

**ARTICLE XIII**  
Amendments

These bylaws may be amended by an affirmative vote of two-thirds of the elected Trustees present or represented by proxy at the properly called meeting at which there is a quorum. Proxy voting is permitted. Notice of any proposed amendment shall be given to each Trustee not less than ten days preceding the meeting at which such proposed amendment will be submitted.