

# **Bylaws of the Corporation, Swarthmore College**

## **I**

### **Board of Managers**

1. Subject to the Charter of Swarthmore College (hereinafter termed the “College”), the Board of Managers (hereinafter termed the “Board”) shall have and exercise all corporate powers prescribed by law and shall have ultimate authority over the College. Pursuant to these Bylaws, and subject to the Charter of the College and applicable law, the Board may delegate to the Chair or committees of the Board, or to the President or other Officers or agents of the College, the authority to take actions necessary or appropriate to implement actions, decisions and policies of the Board. The Board reserves to itself all corporate powers not delegated.
2. The Board shall hold a minimum of three and a maximum of four regular meetings during each academic year, including an annual meeting to be held in April or May. The number of meetings shall be determined by the Board from year to year at the annual meeting, provided, however, that the Chair of the Board may, with respect to any academic year in which three regular meetings have been scheduled, increase the number to four if in the judgment of the Chair the additional meeting is necessary for the proper carrying out of the Board’s business. At the annual meeting, the Board shall also set the dates, times and place of the three or four regular meetings to be held in the following academic year.
3. Special meetings of the Board may be called by the Chair of the Board when the Chair deems them necessary and shall be called by the Chair on the written request of five members of the Board (hereinafter termed “Managers”). The notice of a special meeting shall state its purpose and no business other than that stated shall be transacted. Written notice of the date, time and place of each special meeting shall be given to each Manager at least 3 days prior to the meeting, personally or by sending a copy thereof by first class or express mail, electronic mail, courier service or facsimile transmission, with postage or other charges prepaid.
4. At all meetings of the Board the number of Managers equal to one-third (1/3) of the total number of Managers then serving on the Board shall constitute a quorum for the transaction of business. To the fullest extent permitted by the Pennsylvania Nonprofit Corporation Law of 1988 (hereinafter termed the “Act”) (or any successor act or provision), the Board and any committees of the Board may convene meetings exclusively or partially by electronic technology. As long as all persons participating in such meetings have a reasonable opportunity to participate in the meeting, read or hear the proceedings substantially concurrently with their occurrence, indicate their support for matters submitted to the Managers and, subject to such procedures as the Board may adopt, make appropriate motions and comment on the business of the meeting, participation in a meeting pursuant to this Section 4 shall constitute “in person” presence at the meeting.

5. (a) The Board shall consist of a maximum of thirty-nine members. All Managers shall be elected by the Board for terms of four years from candidates nominated by the Nominating and Governance Committee following the procedure described in Section 9(a) of Article V.

(b) Managers shall be eligible for election for three successive terms and may not be re-elected for one year after the expiration of the third such term, except that, on the recommendation of the Chair of the Board, the Nominating and Governance Committee may defer that one-year requirement in extraordinary circumstances when it finds that deferral would serve the best interests of the College. When such a deferral is granted, it shall be for four years, but it may be renewed if a similar finding is made.

(c) Terms of Managers, Officers of the Corporation, and Chairs of Standing Committees shall begin on July 1 following the Annual Meeting at which they are elected and shall end on June 30 in the last year of their term.

(d) The President of the College and the President of the Alumni Council shall be ex officio members of the Board, but shall not have the right to vote or be counted in determining the total number of Managers serving from time to time or in determining the presence of a quorum.

(e) Vacancies caused by death, resignation, removal, or inability to act shall be filled by election by the Board from candidates nominated by the Nominating and Governance Committee. If a Manager is elected to fill a vacancy for the balance of a term of which two years or less remains, such remaining period shall not be counted as a term for purposes of the term limits set forth in subsection (b) of this Section.

(f) A Manager who breaches or fails to perform the Manager's fiduciary duties under applicable state law may be removed by the Board in accordance with the process developed by the Nominating and Governance Committee in accordance with Section 9(d) of Article V.

## II

### **Officers of the Board**

1. The officers of the Board shall be the Chair and Vice Chair, both of whom shall be Managers. The Chair and Vice Chair shall be elected for a one-year term at each Annual Meeting of the Board, to serve at the pleasure of the Board and until their successors are elected and qualified. The Chair and Vice Chair shall be eligible for re-election at the expiration of their annual terms. The Chair of the Board shall serve no more than four consecutive one-year terms, provided, however, that the Nominating and Governance Committee may nominate the Chair for re-election for up to three additional one-year terms if the Committee determines it to be in the

best interests of the College, and may nominate the Chair for re-election even beyond such seven-year period in the event of extraordinary circumstances. In case of the death, resignation, removal or inability to act of the Chair or Vice Chair, the Board may appoint a Chair or Vice Chair pro tempore, as the case may be, until the vacancy is filled or the disability is removed.

2. The Chair of the Board shall preside at all meetings of the Board and may execute official deeds, contracts, and other documents on behalf of the College as “Chair of the Board”. The Chair of the Board shall be an ex-officio non-voting member of all Committees of the Board.

3. The Vice Chair of the Board in the absence of the Chair of the Board shall discharge all the duties of the Chair of the Board and shall otherwise perform such functions as may be delegated to the Vice Chair by the Chair of the Board.

4. In the event that the Chair of the Board completes twelve consecutive years as Manager while in office, the Chair will be eligible to serve another four-year term as a Manager upon completion of service as Chair. The Vice Chair under the same condition will be eligible to serve an additional one year as a Manager upon completion of service in that office. The requirement in Section 5(b) of Article I for a one year break in service before being eligible for re-election as a Manager will be in effect thereafter.

### **III**

#### **Managers Emeriti**

1. Anyone who has served as a Manager sixteen or more years in the aggregate or who reaches the age of sixty-five during active service on the Board may be recommended by the Nominating and Governance Committee to be elected a Manager Emeritus. A Manager Emeritus shall not be considered in determining the number of Managers under Section 5(a) of Article I or in determining the presence of a quorum.

2. The Nominating and Governance Committee may, under special circumstances, recommend that a Manager who does not meet the foregoing criteria be elected a Manager Emeritus.

3. A Manager Emeritus shall receive notice of all meetings of the Board, may be appointed to any Standing Committee or ad hoc committee of the Board, shall be entitled to attend all meetings of the Board, and shall have all the privileges of a Manager except the right to vote.

## IV

### Committees Generally

1. (a) The Standing Committees of the Board shall be:

- Academic Affairs
- Admissions and Financial Aid
- Audit and Risk Management
- Compensation
- Development and Communications
- Executive
- Finance
- Investment
- Nominating and Governance
- Property
- Social Responsibility
- Student Affairs

(b) The Standing Committees shall be under the control of, and directly responsible to, the Board. Members of the Standing Committees, except for the members of the Executive Committee, the Compensation Committee, and the Nominating and Governance Committee, need not be restricted to Managers. Members of Standing Committees who are not Managers shall serve at the pleasure of the Nominating and Governance Committee. The President of the College shall be an ex-officio non-voting member of each Standing Committee other than the Compensation Committee and the Audit and Risk Management Committee; provided, however, that as to the latter two Committees, the President may attend meetings at the invitation of the respective Chairs. The Chairs of all Standing Committees shall be Managers. The Chair of a Standing Committee (other than the Compensation Committee, Executive Committee, Investment Committee and Nominating and Governance Committee) shall generally serve no more than three consecutive one-year terms, provided, however, that the Chair of a Standing Committee may serve for up to three additional one-year terms if the Nominating and Governance Committee determines it to be in the best interests of the College. The Standing Committees shall keep minutes of their proceedings and shall report to the Board at its regular meetings.

2. The Chair of the Board may from time to time appoint ad hoc committees or task forces for such purposes as the Board shall determine, the members of which need not be restricted to Managers. The chairs of ad hoc committees and task forces shall be Managers or Officers of the College. Ad hoc committees and task forces shall keep minutes of their proceedings and shall report to the Board as and when the Board shall direct.

3. Each Standing Committee and any ad hoc committee or task force may function through such subcommittees as it may determine from time to time. All subcommittees shall keep minutes of their proceedings to be incorporated with the minutes of the parent body.

4. Each of the Standing Committees and each ad hoc committee or task force created pursuant to these bylaws shall be an “other body” within the meaning of the Act (or any successor act or provision). All provisions of said statute relating to fiduciary duty, indemnification, and any other provisions that apply to a board of directors or to directors individually shall be equally applicable to each “other body” and to the members of each “other body” individually.

## V

### **The Standing Committees**

#### 1. Academic Affairs:

(a) The Committee on Academic Affairs shall consult with and advise the President of the College and appropriate other Officers of the College on the care and oversight of all academic affairs.

(b) The Committee shall work closely with the President of the College and the Provost to generate broad policy discussions of educational philosophy, goals, and practices, and, acting on behalf of the Board, shall (i) review all faculty appointments and promotions, including endowed professorships, (ii) review and recommend to the Board action on tenure decisions, (iii) consult on guidelines for yearly faculty salary increases, and (iv) recommend to the Board action on the granting of degrees.

(c) The Committee shall review and advise on the evolving role of technology as it relates both to the Libraries and to the classroom.

(d) Where appropriate, the Committee shall review and advise on issues on quality of life and other human resources issues with respect to the faculty.

#### 2. Admissions and Financial Aid:

(a) The Committee on Admissions and Financial Aid shall be responsible for overseeing admissions and financial aid priorities of the College with a view toward admitting a diverse body of students who have the academic, critical thinking, and other necessary skills to thrive at Swarthmore, benefit from the education provided, and use their training and experience to become innovative and ethical leaders committed to making a difference through their careers and in their communities.

(b) Working closely with the appropriate Officers of the College, the Committee on Admissions and Financial Aid shall (i) review the effectiveness of admissions policies and practices; (ii) establish guidelines to evaluate the growth in scholarship expenditures relative to overall resource allocation; (iii) examine current needs of enrolled and prospective students; (iv) review the financial implications and effectiveness of financial aid policies on a regular basis; and (v) monitor the College's admissions and financial aid policies compared with its peers.

### 3. Audit and Risk Management:

(a) The members of the Audit and Risk Management Committee shall consist of not less than three members of the Board and the Chair of the Finance Committee (ex officio). The Committee shall meet at least three times per year and report to the Board at its next meeting. At any time, the Committee may request to meet with the Board or any of its members as it deems appropriate. The Chair of the Committee shall be empowered to call for and receive reports from any Officer or employee of the College.

(b) The responsibilities of the Audit and Risk Management Committee shall be:

(i) Arranging for an annual audit by independent accountants of all the College's accounts, reviewing the College's annual audited financial statements, and recommending acceptance of these statements to the Board and, upon completion of the audit, reviewing separately (without management present) with the external auditors any significant issues encountered during the audit, including any restrictions to the scope of work or access to required information;

(ii) Arranging for an annual audit by independent accountants of the College's retirement plans and, upon completion of the audit, reviewing separately (without management present) with the external auditors any significant issues encountered during the audit, including any restrictions to the scope of work or access to required information;

(iii) Arranging for the annual filing of and approving Internal Revenue Service Form 990 and 990-T and providing these submissions to the Board of Managers;

(iv) Approving any non-audit services provided by independent accounting firms, which services should be provided by firms other than that providing the annual audit unless approval is given by the Committee prior to engagement;

(v) Monitoring the internal controls of the College, including assessing the information system controls and security;

(vi) Reviewing any certifications, reports, or opinions rendered by the external auditors, including an annual management letter, as well as management's response to such letter;

(vii) Reviewing and approving, if appropriate, major changes to the College's accounting, reporting, and internal control practices;

(viii) Monitoring risk management at the College including reviewing annually the College's insurance coverage and reviewing risk exposure to ensure adequate coverage of key areas of risk;

(ix) Monitoring Board and employee conflict of interest policies and administering an annual survey of Board members and key administrators;  
and

(x) Establishing procedures for the receipt, retention, and treatment of any complaints regarding accounting, auditing, and internal control issues, including procedures for confidential, anonymous submissions of such complaints by employees.

#### 4. Compensation:

(a) The Compensation Committee shall (i) establish compensation and approve the employment contract for the President of the College, (ii) approve the compensation for the President's senior staff, (iii) advise appropriate Officers of the College on compensation policies generally, and (iv) assure that compensation and compensation policies comply with all appropriate laws and regulations.

(b) The Chair of the Board shall be Chair of the Committee and the Vice Chair of the Board shall be Vice Chair of the Committee. The other members of the Committee shall be the Chair of the Finance Committee and three members appointed by the Chair of the Board, one to be appointed each year for a term of three years. No member of the Committee completing a three-year term of service shall be eligible for reappointment to the Committee during the following twelve months.

#### 5. Development and Communications:

(a) The Development and Communications Committee shall confer with the appropriate Officers of the College with respect to all current and long-term development for the College and, with the President and the Officer in charge of the College's development activities, shall have responsibility for the raising of funds to meet the College's annual needs and periodic capital needs.

(b) Working closely with the appropriate Officers of the College, the Committee shall review and advise regarding the ways in which the College (i) communicates its mission, priorities, and needs both within and outside the College community and (ii) receives input from, and encourages involvement in the life of the College of, the various constituencies comprising the College community.

6. Executive:

(a) The Executive Committee shall serve as a resource for informal counseling to the Chair of the Board and the President of the College and shall undertake emergency or interim actions for the whole Board when necessary. Except as otherwise provided by law, the Committee shall also have all the power of the Board between meetings of the Board.

(b) The Chair of the Board shall be Chair of the Committee and the Vice Chair of the Board shall be Vice Chair of the Committee. The other members of the Committee shall be the Chairs of the other Standing Committees, the President and the Secretary of the College, and not more than three other Managers appointed from time to time by the Chair of the Board.

(c) The Committee shall convene by call of the Chair, the Vice Chair or the President of the College, or at the request of any two members of the Committee. Six or more members of the Committee shall constitute a quorum for the transaction of business.

7. Finance:

(a) The Finance Committee shall have the responsibility of reviewing the annual operating and capital budgets submitted by the President of the College, and when such budgets are approved by such Committee, they shall be recommended to the Board for final action. The Committee shall have authority to authorize changes in the budgets and the making of unusual expenditures as may from time to time be recommended by the President of the College, but such changes or expenditures shall be reported at the next meeting of the Board.

(b) The Committee shall also have responsibility for the administration of all trusts where the College is the fiduciary, including the allocations and distributions of principal and income of the various trusts to beneficiaries and to funds and endowments of the College. Subject to the approval of the Board, the Committee may provide for and establish common trust funds for some or all of the trusts where the College is the fiduciary.

(c) The Committee, on behalf of the Board, shall have oversight of the finances of the College and shall recommend to the Board, in conjunction with the Investment Committee, a guideline for spending endowment returns. The Chair of the Committee shall be empowered to call for and receive from any officer or employee reports on the condition of the finances of the College and the various funds of the College, including funds of which the College is a fiduciary.

(d) The Committee shall work closely with the Vice President for Finance and Administration in reviewing the College's five year plans, other financial planning materials, and financial aid programs.



8. Investment:

(a) The Investment Committee shall have responsibility for the investing, sale, and reinvesting of all funds of the College and all funds held and administered by the College as fiduciary, in conformity with investment policies reviewed and approved by the Board at least annually, and in strict accordance with the terms of any trust, will, deed or gift or other instrument under which funds have been donated or entrusted to the College.

(b) All investments shall be held in the name of the College, or of a nominee of such bank or banks as may from time to time be designated by the Committee as custodians of the securities owned or controlled by the College, or of a partnership or fund of which the College is a limited partner or shareholder, or by the College as fiduciary.

(c) The Committee shall meet a minimum of four times per year. The Chair of the Finance Committee, or other member of that Committee designated by it, shall be a member of the Investment Committee.

(d) With respect to the endowment, the Committee shall be responsible for:

(i) Recommending investment policies for the endowment to the Board;

(ii) Selecting investment managers, investment partnerships, consultants, bank custodians, and other experts, as appropriate;

(iii) Making direct investments in cases in which an investment manager is not used;

(iv) Monitoring the adherence of endowment investments to the investment policies and evaluating the performance of the endowment and investment managers against objectives;

(v) Recommending to the Board, in conjunction with the Finance Committee, a guideline for spending endowment returns; and

(vi) Developing policies regarding the voting, or voting of proxies, at any stockholders' meeting of any corporation of which the College, as fiduciary or otherwise, owns stock.

(e) Members of the Investment Committee shall be eligible for election for two successive four-year terms and may not be re-elected for one year after the expiration of the second such term, except that, on the recommendation of the Chair of the Board, the Nominating and Governance Committee may defer that one year requirement in extraordinary circumstances when it finds that deferral would serve the best interest of the College. When such a deferral is granted, it shall be for four years, but it may be renewed if a similar finding is made.

9. Nominating and Governance:

(a) The Nominating and Governance Committee, meeting together with the President of the Alumni Council and the Chair of the Nominating Committee of the Alumni Council, shall review all nominations for Manager received from Alumni Council and individual alumni, as well as all other persons proposed by the Nominating and Governance Committee, and shall select the nominees to be presented to the full Board of Managers for election at the Annual Meeting. Managers may, but need not, be alumni of the College.

(b) At the Annual Meeting of the Board, the Committee shall nominate candidates to fill the Offices of the Corporation. At any regular meeting of the Board, the Committee may nominate candidates to fill such vacancies as may exist among the Managers.

(c) The Committee shall determine the membership of the Standing Committees and the Chairs and Vice Chairs thereof on an annual basis and shall report the same to the Board at the Annual Meeting.

(d) The Committee shall have responsibility for the development of policies to govern the activities of the Board, including the review and modification from time to time of the Charter or these Bylaws, the review of the number and areas of responsibility of the Standing Committees, the articulation of standards for the proper conduct by Managers of their duties, and the design of a process for removal of Managers as necessary.

(e) The Committee shall have the responsibility for establishing and implementing procedures for reviewing the performance of the President of the College.

(f) The Committee shall consist of six members, one or two of whom shall be appointed by the Board in alternating years to serve for a term of four years. At or before the second regular meeting of the Board following the Annual Meeting in each calendar year, the Chair of the Board shall appoint a special committee of three Managers to nominate to the Board at the subsequent meeting names of one or two persons to serve on the Committee for four years, or to fill any other vacancies on the Committee.

(g) No member of the Committee completing a term of service shall be eligible for reappointment to the Committee during the following twelve months; provided, however, that the term of the person serving as Chair of the Committee may be extended for up to two additional years if the Chair of the Board, in consultation with the other members of the Nominating and Governance Committee, determines it to be in the best interests of the College for the Chair of the Committee to continue to serve as Chair of the Committee after the conclusion of a four-year term.

10. Property:

- (a) Working with the appropriate Officers of the College, the Property Committee shall be responsible for oversight to ensure an acceptable level of maintenance and care of the College grounds, buildings, property, equipment, technology infrastructure, and all matters pertaining thereto.
- (b) With the appropriate Officers of the College, the Committee shall be responsible for overseeing the planning of all new buildings and all significant renovations of and extensions and improvements to existing buildings.
- (c) In consultation with the appropriate Officers of the College, the Committee shall be responsible for overseeing all matters relating to real estate, including the acquisition, disposition or development thereof.

11. Social Responsibility:

- (a) The Committee on Social Responsibility shall reflect upon the College's commitment, in conjunction with the fulfillment of its institutional mission, to prepare and motivate students (i) to engage issues of social responsibility facing our communities and societies and (ii) to set their own paths as responsible citizens toward shaping a more inclusive, just and compassionate world.
- (b) The Committee shall be composed of Managers, Officers of the College, members of the faculty of the College, members of the staff of the College, students of the College, and alumni of the College, the number of members in each category to be determined by the Board from time to time.

12. Student Affairs:

- (a) Working closely with the Deans of the College, the Committee on Student Affairs shall be responsible for reviewing issues that from time to time broadly affect student life at the College and shall act as a forum at which issues of concern to students can be aired.
- (b) Working closely with the appropriate Officers of the College, the Committee shall oversee all aspects of the College's athletic programs that relate to the experience of students in and with such programs, provided that all matters related to appointments to the physical education department and the teaching responsibilities within the department shall be the responsibility of the Committee on Academic Affairs.

## VI

### Officers of the College

1. The Officers of the College shall consist of a President, a Vice President for Finance and Administration, a Secretary, a Treasurer, a Provost, and such other officers as the President shall determine to be necessary to conduct the business of the College. All Officers of the College shall serve at the pleasure of the Board, subject to the terms of any written employment contract between an Officer and the College.
2. The President shall be the chief executive officer of the College and, subject to the Board, shall have all authority and responsibilities normally pertaining to the office of a President, with primary responsibility for the operation and general supervision of the affairs of the College. The President shall have administrative authority over all academic and nonacademic staff of the College, including the authority to hire other Officers and staff of the College, and shall have power to delegate authority under this Section to Officers of the College and other administrators. Without limitation of the foregoing, the President shall prepare timely annual operating and capital budgets for submission to the Finance Committee and shall make regular reports to the Board on the state of the College.
3. The Vice President for Finance and Administration shall be the chief financial officer of the College. The Vice President for Finance and Administration and the Treasurer may be the same person.
4. The Secretary shall keep, in a book provided for the purpose, accurate minutes of all proceedings of the Board. The Secretary shall send notices of all regular meetings of the Board at least five days prior thereto to all Managers and Managers Emeriti at their addresses last known to the Secretary.
5. The Assistant Secretary in the absence of the Secretary shall discharge all the duties of the Secretary and shall otherwise perform such functions as may be delegated to the Assistant Secretary by the Secretary.
6. The Treasurer shall have custody of all funds of the College, including all funds of which it is fiduciary, and shall receive all income from investments and all money paid to the College and shall deposit the same in such institutions as the Board may direct.
7. The Assistant Treasurer in the absence of the Treasurer shall discharge all the duties of the Treasurer and shall otherwise perform such functions as may be delegated to the Assistant Treasurer by the Treasurer.
8. The Provost shall be the principal academic officer of the College and shall oversee the curriculum and the Faculty. The Provost shall work with the department chairs on faculty

appointments, re-appointments and tenure and promotion decisions, and shall propose and implement curricular changes.

9. The Officers of the College shall be responsible to the President of the College and through the President to the Board.

## **VII**

### **The Faculty**

Subject to these Bylaws, the Faculty of the College shall have the primary responsibility for designing and implementing the College educational program, as set forth in the Handbook for Instructional Staff, working in collaboration with the Provost and other administrative officers appointed by the President. The Faculty may establish such committees and leadership as they deem appropriate in carrying out their functions. Further, given the essential role of the Faculty in carrying out the core educational mission of the College, their views shall be solicited in good faith when formal policies relating to the rights and responsibilities of the College community as a whole are adopted.

## **VIII**

### **Principles of Shared Governance**

The College recognizes principles of shared governance as part of its history, traditions, and ethics. The Board, the President and other Officers of the College, and the Faculty all have essential roles in fulfilling the mission of the College. Reasoned opportunities for engagement and respectful dialogue shall be afforded by the President of the College and, as appropriate, the Board on matters of importance to the College community as a whole.

## **IX**

### **Seal**

The Seal of the Corporation shall be in the custody of such Officer of the College or such Manager as the Board may from time to time direct.

## **X**

### **Restricted Use of Surplus Funds**

The use of any surplus funds for the private inurement to any person in the event of a sale or dissolution of the Corporation is expressly prohibited.

## XI

### Indemnification

1. The College shall indemnify any Manager, Officer of the College, employee, or other person who was or is a party to, or is threatened to be made a party to, or who is called as a witness in connection with, any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the College), by reason of the fact that such person is or was a Manager, Officer of the College, or employee of the College, or is or was serving at the request of the College as a Manager, Officer, employee, member of a committee or “other body”, or representative of another corporation, partnership, joint venture, trust, or other enterprise (each such person a “Representative”), against expenses, including attorneys’ fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the Representative in connection with such action, suit, or proceeding if the Representative acted in good faith and in a manner the Representative reasonably believed to be in, or not opposed to, the best interests of the College and, with respect to any criminal proceeding, had no reasonable cause to believe the Representative’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the College and, with respect to any criminal proceeding, had reasonable cause to believe that the person’s conduct was unlawful.

2. The College shall indemnify any Representative who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the College to procure a judgment in its favor by reason of the fact that such person is or was a Representative of the College, or is or was serving at the request of the College as a Manager, Officer of the College, employee, agent, or other representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys’ fees) actually and reasonably incurred by the Representative in connection with the defense or settlement of the action if the Representative acted in good faith and in a manner the Representative reasonably believed to be in, or not opposed to, the best interests of the College. Indemnification shall not be made under this Section 2 in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the College unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the College is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

3. Unless ordered by a court, any indemnification under Section 1 or Section 2 of this Article XI shall be made by the College only as authorized in the specific case upon a determination that indemnification of the Representative is proper in the circumstances because the Representative has met the applicable standard of conduct set forth in said Section 1. Such determination shall be made: (i) by a Committee composed of the Chair of the Board, Vice Chair of the Board, and Chair of the Finance Committee, or if any of those are interested or unable to serve, other disinterested Managers whom the Chair of the Board may appoint in their stead; or (ii) if said Committee so directs, by the Board by majority vote of a quorum consisting of Managers who were not parties to such action, suit, or proceeding; or (iii) if such a quorum is not obtainable, or, even if obtainable, if a majority vote of a quorum of disinterested Managers so directs, by independent legal counsel in a written opinion.

4. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article XI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, contract, vote of disinterested Managers, or pursuant to the direction, howsoever embodied, of any court of competent jurisdiction or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. It is the policy of the College that indemnification of, and advancement of expenses to a Representative shall be made to the fullest extent permitted by law. To this end, the provisions of this Article XI shall be deemed to have been amended for the benefit of a Representative effective immediately upon any modification of the Pennsylvania Nonprofit Corporation Law or the Directors' Liability Act of the Commonwealth of Pennsylvania which expands or enlarges the power of the College to indemnify, or advance expenses to a Representative.

5. The College shall pay expenses (including attorneys' fees) incurred by a Representative in defending a civil or criminal action, suit, or proceeding referred to in this Article XI in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the College. Such advance shall be made upon a determination that such person meets the applicable standard of conduct set forth in Section 1 of this Article XI by any of the persons permitted to make the determination of indemnification under Section 2 hereof.

6. Indemnification pursuant to this Article XI shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness, or where the Board determines that under the circumstances indemnification would constitute an excess benefit transaction under Section 4958 of the Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter termed the "Code").

7. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article XI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Representative and shall inure to the benefit of the heirs, executors, and administrators of such person.

8. The College shall have the authority to purchase and maintain insurance on behalf of any person against the liabilities described in Section 1 of this Article XI, whether or not the College would have the power to indemnify such person against such liabilities under this Article XI. To the extent that such insurance coverage provides a benefit to the insured person, the College's payment of premiums with respect to such insurance shall be provided in exchange for the services rendered by the insured person and in a manner so as not to constitute an excess benefit transaction under Section 4958 of the Code. The College shall have the authority to create a fund of any nature, which may be, but need not be, under the control of a trustee, or otherwise secure or insure in any manner, its indemnification obligations, whether arising under these bylaws or otherwise. This authority shall include, without limitation, the authority to (i) deposit funds in trust or in escrow, (ii) establish any form of self-insurance, (iii) secure its indemnity obligation by grant of a security interest, mortgage, or other lien on the assets of the College, or (iv) establish a letter of credit, guaranty, or surety arrangement for the benefit of such persons in connection with the anticipated indemnification or advancement of expenses contemplated by this Article XI. The provisions of this Article XI shall not be deemed to preclude the indemnification of, or advancement of expenses to, any person who is not specified in Section 1 of this Article XI but whom the College has the power or obligation to indemnify, or to advance expenses for, under the provisions of Pennsylvania statutes or otherwise. The authority granted by this Section 7 shall be exercised by any of the persons permitted to make the determination of indemnification under Section 2 hereof.

9. A contract shall exist between the College and each of its Representatives with respect to indemnification and advance of expenses. No amendment or repeal of any provision of this Article shall alter, to the detriment of the Representative, the Representative's right to the advance of expenses or indemnification related to a claim based on an act or failure to act which took place prior to such amendment or repeal.

10. For purposes of this Article:

(a) References to "other enterprises" shall include employee benefit plans;

(b) References to "serving at the request of the College" shall include any service as a representative of the College that imposes duties on or involves services by the representative with respect to an employee benefit plan, its participants or beneficiaries;

(c) Excise taxes assessed on a person with respect to any employee benefit plan pursuant to applicable law shall be deemed "fines";



(d) Action with respect to an employee benefit plan taken or omitted in good faith by a representative of the College in a manner the representative reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the College.

## **XII**

### **Liability of Managers**

No Manager shall be personally liable, as such, for monetary damages for any action taken on behalf of the College or for any failure to take action unless the Manager has breached or failed to perform the Manager's fiduciary duties under Pennsylvania law and such breach or failure constitutes self-dealing, willful misconduct or recklessness or is otherwise unlawful; provided, however, that this Article XII shall not absolve a Manager from responsibility or liability pursuant to any criminal statute or from liability for the payment of federal, state, or local taxes.

## **XIII**

### **Amendments**

These Bylaws may be amended at any regular meeting of the Board, notice of such change having been given at a previous regular meeting, provided that the Secretary shall have given timely notice to each Manager of such proposed amendment.

As amended and approved by the Board of Managers on February 24, 2024.