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BYLAWS OF THE ELIZABETH CITY STATE UNIVERSITY FOUNDATION

ARTICLE I. NAME, LOCATION, AND OFFICES.

Section 1. Name. The name of this corporation shall be The Elizabeth City State University Foundation, Inc. (“Foundation” or “the Foundation”).

Section 2. Registered Office and Agent. For the purpose of service of process, notices, demands, and the like, the Foundation shall always maintain a registered office in the State of North Carolina and shall have a registered agent whose address is identical with the address of such registered office in accordance with the requirements of the North Carolina Nonprofit Corporation Act (North Carolina General Statute 55-A). All changes in the Foundation’s registered office or its registered agent shall be effected only in accordance with the applicable procedures set forth in the North Carolina Non-Profit Corporation Act and by the execution and filing with the Secretary of State of such forms and other papers as may be required by the Secretary of State.

Section 3. Principal Office. The principal office of The Elizabeth City State University Foundation shall be located in Elizabeth City, Pasquotank County, North Carolina.

Section 4. Other Offices. The Foundation may have offices at such other places, within the State of North Carolina, as the Foundation Board of Directors determines.

ARTICLE II. PURPOSES AND GOVERNING INSTRUMENTS.

Section 1. Nonprofit Foundation. The Foundation shall be organized and operated as a nonprofit Foundation under the provisions of the North Carolina Nonprofit Corporation Act. It

shall be organized, and always thereafter operated, exclusively for public, charitable, educational, and scientific uses and purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code for the benefit of, or to support the purpose of, Elizabeth City State University (ECSU).

Section 2. Charitable, Educational, and Scientific Purposes. The Foundation is a nonprofit corporation domiciled in North Carolina for the purposes of which, as set forth in the Articles of Incorporation, are exclusively charitable, educational, and scientific within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Section 3. Governing Instruments. The Foundation shall be governed by its Articles of Incorporation and these bylaws (together known as the “Organizational Documents”).

Section 4. Existence.

- a) It is the intent of the Foundation that it has perpetual existence.
- b) If the Foundation desires to remove its status as an Associated Entity of Elizabeth City State University, for whatever reason, it shall provide the University with at least 60 days prior written notice.
- c) If the Foundation loses its status as an approved Associated Entity, for whatever reason, it shall immediately dissolve and distribute its assets in accordance with Article II, Section 5.

Section 5. Dissolution.

- a) In the event of dissolution of the Foundation, all assets and property which remain after the discharge of the Foundation’s liabilities and unless otherwise designated by the donor of an asset shall be paid over or distributed by the Board of Directors to the Elizabeth City State University and shall be used or distributed for no other object or purpose whatsoever.

ARTICLE III. SEAL.

Section 1. Description of Seal. The Seal of the Foundation shall consist of a circle with the words “The Elizabeth City State University Foundation.” ¹

ARTICLE IV. BOARD OF DIRECTORS.

Section 1. Authority and Responsibility of the Board of Directors. Subject to the terms of the Foundation’s Organizational Documents, the supreme authority of the Foundation and the government and management of the affairs of the Foundation shall be vested in the Board of Directors. ²

All powers, duties, and functions of the Foundation conferred by the Organizational Documents, state statutes, common law, court decisions, or otherwise, shall be exercised, performed or

¹ N.C.G.S § 55A-3-02

² N.C.G.S § 55A-8-01

controlled by the Board of Directors. The Foundation, pursuant to a written Operating Agreement with Elizabeth City State University, shall abide by the policies or regulations established by the University and the University System, as applicable, so as to fulfill its mission of supporting the institution.

- a) As the governing body of the Foundation, the Board of Directors shall supervise, control, and direct the management, affairs and property of the Foundation; shall determine its policies or changes therein; and shall actively pursue its purposes and objectives and supervise the disbursement of its funds.
- b) The Board of Directors may adopt by majority vote, such rules and regulations for the conduct of its business and the business of the Foundation as shall be deemed advisable, and may, in the execution of the powers granted, delegate certain of its authority and responsibility to the Executive Committee, defined in Article VIII Section 1. Under no circumstances, however, shall any actions be taken which are inconsistent with the Organizational Documents.
- c) As an “Associated Entity” of Elizabeth City State University, the Foundation shall maintain a current “Operating Agreement” with the Chancellor of the University.
- d) The Board of Directors shall not permit any part of the net earnings or capital of the Foundation to financially or otherwise benefit any member, Director, Officer, or other private person or individual. Such action is considered beyond a conflict of interest. The action will be referred to law enforcement authorities.
- e) The Foundation shall make no financial loan arrangements with any member, Director, Officer, or other private person or individual.
- f) The Board of Directors may, from time to time, appoint advisors to assist and support the Board in determining policies and formulating programs to carry out the purposes and functions of the Foundation.
- g) Subject to the provisions of these bylaws, the Board of Directors is authorized to employ such person or persons, including attorneys, agents, and assistants, as in its judgment are necessary or desirable for the administration and management of the Foundation, and to pay reasonable compensation for the services performed and expenses incurred by any such person or persons.
- h) Anything in these bylaws to the contrary notwithstanding, Elected or Appointed Directors and the Executive Director of the Foundation shall be approved by the Board of Directors of the Foundation. No Elected or Appointed Director shall be terminated without the approval of The Elizabeth City State University Foundation Board of Directors.

Section 2. Board of Director Classes. The Board of Directors of the Foundation shall have the following classes of Directors, defined in Sections 2a, 2b, and 2c of Article IV, respectively:

- a) **Elected Directors.** Each year the Nominations Committee shall submit a list of proposed Directors to the Executive Committee for its review and approval. The Executive Committee shall submit this list of approved Directors to the full Board of Directors for election at the March meeting of the Board of Directors in accordance with Article IV Section 3. In addition to this proposed slate of nominees, nominations may also be made from the floor at the March meeting. Elected Directors are voting members of the Full Board.
- b) **Ex Officio Directors.** Ex Officio Directors shall be Directors of the Foundation by virtue of their position within Elizabeth City State University or another organization related to Elizabeth City State University or as determined by the Board of Directors and shall have voting rights as described below. The following persons shall be Ex Officio Directors during their respective terms of office within Elizabeth City State University:

EX-OFFICIO VOTING MEMBERS

- 1) The **Chancellor** of Elizabeth City State University shall be a **voting** Ex Officio member of The ECSU Foundation Board of Directors;
- 2) The **President** of the Elizabeth City State University **National Alumni Association** shall be a **voting** Ex Officio member of The ECSU Foundation Board of Directors;

EX OFFICIO NON-VOTING MEMBERS

- 3) The **Chairperson of the Board of Trustees** of Elizabeth City State University or a designee shall be a **non-voting** Ex Officio member of The ECSU Foundation Board of Directors;
- 4) The **Vice President of the Student Government Association** or a designee shall be a **non-voting** Ex Officio member of The ECSU Foundation Board of Directors;
- 5) Elizabeth City State University's **Vice Chancellor for University Advancement** shall be a **non-voting** Ex Officio member of The ECSU Foundation Board of Directors; and
- 6) Elizabeth City State University's **Vice Chancellor for Business and Finance** shall be a **non-voting** Ex Officio member of The ECSU Foundation Board of Directors.

- c) **Appointed Directors.** The Chancellor of Elizabeth City State University may appoint members of The ECSU Foundation Board of Directors in accordance with Article IV Section 3. At least one third (1/3) of the voting members the Board shall be appointed by the Chancellor. Chancellor appointed members are voting members of the Full Board.

Section 3. Number of Directors. The Board of Directors of the Foundation shall consist of no less than fifteen (15) and no more than twenty-five (25) Directors, including those elected, those appointed, and the six (6) Ex Officio Directors listed in Section 2c of this Article IV. The Chancellor may appoint up to eight (8) Directors of the Board and the current Board shall elect no less than (7) Directors and no more than eleven (11) Directors. The "Full Board" shall mean all current Directors on the Board.³

Section 4. Terms. For Elected or Appointed Directors, three (3) years shall constitute one (1) term. However, the Board may limit the first term of any Elected or Appointed Director to one

³ N.C.G.S § 55A-8-03.

(1) or two (2) years at its discretion. Each Elected or Appointed Director may be eligible to be elected to serve three (3) terms. No Elected or Appointed Director shall serve more than three (3) consecutive terms. However, an Elected or Appointed Director at the end of three (3) consecutive terms will be eligible for reappointment or re-election after not serving for one (1) year. A term shall expire at 12:00 midnight on the last day of the fiscal year (July 1– June 30).

Section 5. Vacancies. Any vacancy occurring among Elected or Appointed Directors appointed by the Board of Directors may be filled by the affirmative vote of a majority of Elected or Appointed Directors constituting a quorum. An Elected or Appointed Director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

Section 6. Spouses and Other Immediate Family Members of University Leaders. Spouses and other immediate family members of university leaders may not serve on the Board of Directors of The Elizabeth City State University Foundation. University leaders are defined as the Chancellor, those persons who report directly to the Chancellor, and those persons who report directly to them.

Section 7. Remuneration. No member of the Board of Directors shall be paid any salary by the Foundation.

Section 8. Removal of Directors. Any Elected or Appointed Director, appointed by the Board of Directors, may be removed from the Board with or without cause by a vote of two-thirds of the Full Board.

ARTICLE V. MEETINGS OF THE BOARD OF DIRECTORS.

Section 1.

- a) **Place of Meetings.** Meetings of the Board of Directors may be held at any place as set forth in the notice thereof or in the event of a meeting held pursuant to waiver of notice, as may be set forth in the waiver or if no place is so specified, at the principal office of the Foundation.⁴
- b) **Notice of Meetings of the Board.** The Full Board shall hold regular meetings at least semi-annually of each year. In practice, the Full Board meets regularly on a quarterly basis. The Chairperson of the Board (Chairperson) and/or Executive Director shall provide notice of the time and place for the holding of regular meetings of the Board.⁵
- c) **Special Meetings of the Board.** Special meetings of the Full Board may be called by the Chairperson or the Executive Director at his or her discretion. The Chairperson or the Executive Director, on written or electronic request of three or more members of the Executive Committee, may call a special meeting to be conducted not later than two weeks after such request. Notice of all meetings of the Board shall be given in writing at

⁴ N.C.G.S § 55A-8-20.

⁵ N.C.G.S § 55A-8-21.

least ten (10) days prior to the date of the meeting.

- d) **Notice of Regular Meetings: Executive Committee.** The Executive Committee shall hold regular quarterly meetings of each year. The Chairperson or their designee shall provide notice of the time and place for the holding of meetings of the Executive Committee.
- e) **Notice of Special Meetings: Executive Committee.** Special Meetings of the Executive Committee may be called by the Chairperson at his or her discretion. The Chairperson, on written or electronic request of three or more members of the Executive Committee, shall call a special meeting of the Executive Committee to be conducted not later than two weeks after such request. Notice of any such meeting of the Executive Committee shall be given in writing at least ten (10) day prior to the date of the meeting.
- f) **Manner of Acting.** The act of a majority of the Board present at a meeting at which a quorum is present shall be an act of the Board unless a greater number is required by these bylaws or by law.
- g) **Proxies.** A Director may not vote by proxy.⁶
- h) **Action By Written Consent.** From time to time for speed and convenience, certain matters may require action without a meeting by the Board or its committees.⁷
 - a. Voting for such matters may be conducted by mail, email, or facsimile transmission. The result of the vote must be certified by the Chairperson and Secretary and promptly reported to the Board or the committee. Such votes duly certified shall have the same effect as if said action occurred during a properly noticed meeting.
 - b. In accordance with NCGS § 55A-7-04, action required or permitted to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action.
 - c. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
 - d. A signed consent has the effect of a meeting vote and may be described as such in any document.

ARTICLE VI. NOTICE AND WAIVER.

Section 1. Procedure. Whenever these bylaws require notice to be given to any Director, the notice shall be given as prescribed in Article V. Whenever notice is given to a Director by mail,

⁶ N.C.G.S § 55A-7-24.

the notice shall be sent by first-class mail depositing the same in a post office or letter box in a postage prepaid sealed envelope addressed to the Director at his or her address as it appears on the books of the Foundation; and such notice shall be deemed to have been given at the time the same is deposited in the United States mail. Notice shall be deemed to have been given by facsimile or email at the time reflected on the Foundation's records of transmission.⁸

ARTICLE VII. OFFICERS.

Section 1. Officers. The Officers of the Foundation shall be Chairperson, Vice Chairperson, Secretary, and Treasurer, defined in Article VII Sections 1a, 1b, 1c, and 1d, respectively. The Chairperson, Vice Chairperson, Secretary and Treasurer shall be nominated by the Governance and Audit Committee and elected by the Foundation Board of Directors at the full board meeting in March as described in Section 1e. These four officers shall serve a term of two years. Officer terms shall be limited to two terms in that specific office.⁹

- a) **The Chairperson of the Board.** The Chairperson presides over all board meetings and shall perform such duties as assigned by the Board of Directors. In addition to serving as Chairperson of the Executive Committee, the Chairperson of the Board shall be an ex officio member of all committees of the Board. The Chairperson is also responsible for working with the Executive Director and the Chancellor to ensure that the Foundation's Operating Agreement with the University is current.
- b) **Vice Chairperson.** The Vice Chairperson shall preside at all meetings of the Board of Directors in the absence or inability of the Chairperson and shall do and perform such duties as may be assigned to him or her by the Chairperson. In the event that the Chairperson's role shall become vacant for any reason, the Vice Chairperson shall assume the duties of the Chairperson until the next meeting of the board, at which time a successor Chairperson shall be elected to complete the unexpired term.
- c) **The Secretary.** The Secretary shall attend all meetings of the Board of Directors. The Secretary shall keep in safe custody the seal of the Foundation and, when authorized by the Board of Directors or the Chairperson, affix it to any instrument requiring it. When so affixed, it shall be attested by the Secretary's signature. The Executive Director, with consent of the Secretary, may designate a member of the University's professional staff to serve in an "Assistant Secretary" role to perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the Executive Director may from time-to-time delegate. The Assistant Secretary is authorized to record, or cause to be recorded, all votes, actions, and minutes of the Board and such committees as directed by the Board. The Assistant Secretary may give, or cause to be given, notice of all meetings of the Board of Directors. The Secretary shall be chosen by a majority vote of the Directors present when a quorum is present at the March regular meeting.¹⁰

⁸ N.C.G.S § 55A-8-40.

¹⁰ N.C.G.S § 55A-8-40 (c) provides for the appointment of assistant secretaries who may be delegated with the responsibility and authority to maintain and authenticate the records of the corporation.

- d) **The Treasurer.** The Treasurer shall, in conjunction with the Executive Director and the Office of University Advancement, have charge and custody of and be responsible for all funds of the Foundation; receive and give receipts for monies due and payable to the Foundation from any source whatsoever, and deposit all such monies and gifts in accordance with Article IX. The Treasurer shall also, in conjunction with the Office of University Advancement, prepare, or cause to be prepared, a true statement of the Foundation's assets and liabilities at the close of each fiscal year, all in reasonable detail, which statement shall be made and filed at the Foundation's registered office within three months after the end of such fiscal year and thereafter kept available for a period of at least seven (7) years. He or she shall, in general, perform all duties as, from time to time, may be assigned by the Chairperson. The Treasurer shall be chosen by a majority vote of the Directors present when a quorum is present at the March regular meeting. The Treasurer also serves as Chairman of the Budget and Finance Committee.
- e) **Officer Elections.** The Governance and Audit Committee shall originate the nominating process at the December meeting prior to the conclusion of the two-year term of outgoing officers by presenting a timeline and process to receive nominations to the Executive Committee and then to the Full Board. Members of the Full Board may nominate individuals to serve as board members or, if timely, as Officers. When the deadline for submission closes, the Governance and Audit Committee Chairman shall submit recommended nomination submissions to the Executive Committee for review. The Executive Committee shall review all submitted nominations. A ballot of individuals to fill each office shall be slated by the Executive Committee. Nominated candidates will be notified prior to announcing the ballot. Nominations may also come from the floor. All voting board members are eligible to vote. Voting shall be conducted at the March meeting.

Section 2. The Executive Director. The Executive Director of the Foundation shall be the Vice Chancellor for University Advancement, or another appropriate university official designated by the Chancellor and approved by the Board. The Executive Director shall act as the Chief Executive Officer of the Foundation and be responsible for the day-to-day operations and management of the Foundation and shall report directly to the Chancellor and the Board. The Executive Director shall be responsible for the prudent management of the Foundation's assets and staff.

Section 3. Officer Vacancies. A vacancy in any elected officer position may be filled by a majority vote of the Board at a regular meeting or a special meeting for that purpose. The new Officer shall serve for the unexpired term of his or her predecessor in office.

Section 4. Fiduciary Duties. All Directors, Officers, and employees of the Foundation owe legal fiduciary duties to the Foundation for their conduct and decisions. The following duties are emphasized of all Directors, Officers, and employees:¹¹

- a) Fiduciary Duty of Care:
- a. This is the legal requirement that Foundation Directors and Officers act in a manner of care as an ordinary prudent person in a like position would exercise under similar

¹¹ N.C.G.S § 55A-8-30.

circumstances.

- b. In discharging this duty, a Director and Officer is entitled to rely on information, opinions, reports or statements if prepared by persons reasonably believed to have professional or expert competence.
- b) Fiduciary Duty of Loyalty:
 - a. This is the legal requirement that Directors and Officers always put the interests of the Foundation above all others.
 - b. Foundation Directors and Officers should be independent of outside influences and always seek fair dealing in decisions.
 - c. Foundation Directors and Officers should avoid conflicts of interests. When such a conflict is probable, Foundation Directors and Officers should self-identify the conflict and avoid acting in a manner that is not in the best interests of the Foundation.
- c) Fiduciary Duty of Obedience:
 - a. This is the legal requirement that Foundation Directors and Officers always to act in accordance with governing documents, laws, and the principal's instructions.
 - b. Foundation Directors and Officers must adhere to the Foundation's mission, bylaws, policies, relevant laws and instructions.

Section 4. Compliance with Fiduciary Duties Excuses Liability.

- a) A Foundation Director and Officer shall discharge his or her fiduciary duties under his or her authority in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner, he or she reasonably believes to be in the best interests of the corporation.
- b) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of his office in compliance with subparagraph (a), above, or (unless his or her actual knowledge concerning the matter in question makes such reliance unreasonable) he or she relied on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within their professional or expert competence.

Section 5. Delegation of Duties. The Board may delegate the powers or duties of any Officer by majority vote to any other Officer, including the Executive Director, or another Director.

Section 6. Removal. Any Officer elected or appointed by the Board may be removed by a majority vote of the Full Board for any reason whenever, in the Board's judgment, the best interests of the Foundation would be served thereby. Such removal shall be without prejudice to any contract rights of the Officer so removed.

- a) **At Large Members of the Executive Committee.** The Chairperson, with the advice and consultation of the Chairman of the Governance and Audit Committee shall appoint At Large members to the Executive Committee in accordance with the limitation noted in Article VIII, Section 1. Such appointments must be from the pool of voting members of the Full Board. The appointment of At Large members to the Executive Committee permits the Full Board at a minimum to:
- a. Acquaint newer board members with leadership functions prior to chairing a committee;
 - b. Bring in talent of a board member during a special time during Board decision making (property sale or acquisition, strategic investment considerations, etc); and/or
 - c. Any other reason deemed important by the Chairperson of the Board and the Chairperson of the Governance and Audit Committee.

At Large members shall have full rights and privileges, to include voting, as a member of the Executive Committee. At Large members are appointed to serve on the Executive Committee for a period of one year. There shall be no restriction on the number of years a Director may serve in an At Large capacity on the Executive Committee. At Large Executive Committee members may be removed from the Committee by a two-thirds (2/3) vote of the Committee without the vote of the Committee member in question. The total number of people to serve on the Executive Committee is determined by the number of persons serving, not by the number of roles established.

- b) **Executive Committee Quorum.** At meetings of the Executive Committee, a majority of the voting Directors shall constitute a quorum, and this number or more shall be necessary for the proper transaction of business of the Foundation. A board member may serve as chairman of two committees. In this instance the individual board member, rather than the two roles served, counts as the Director required toward total quorum. At no time do the Committee roles or Officer roles dictate the total number of persons required for a quorum of the Executive Committee.
- c) **Executive Committee Duties.** The Executive Committee shall be the day-to day administrative body of the Foundation. Its primary role shall be to ensure operational continuity and timely decision-making when full Board deliberation is not practical. The Executive Committee shall:
- a. serve as the primary planning body for the Foundation;
 - b. shall consider and approve all budget matters;
 - c. perform all other administrative duties assigned by the Board of Directors; and
 - d. report on its actions at the next meeting of the Board.

As a matter of practice, all documents, presentations, and Foundation concerns shall be

presented to the Executive Committee in advance of presentation to the Full Board. It shall be at the discretion of the Chairperson of the Board and the Executive Director jointly to override this practice on a case-by-case basis.

- d) **Executive Committee Powers.** In the interval between meetings of the Board, the Executive Committee may transact business of the Foundation on behalf of the Board.
- a. On unrestricted funds only, the Executive Committee may approve expenditures not to exceed \$20,000 or 20% of the total unrestricted funds whichever is the largest. The Executive Committee may authorize these actions and shall report them to the Board at its next meeting.
 - b. Take emergency action to protect the interests of the Foundation when timing prohibits convening the full Board.
 - c. Oversee implementation of Board-approved strategies and budgets.
 - d. Monitor organizational performance between Board meetings.
 - e. Advise the Executive Director and Officers on operational or personnel matters within approved policy frameworks.

Section 2. Standing Committees. The Chairperson of the Board in consultation with the Executive Director of the Foundation shall appoint the members of the following Standing Committees and their respective chairpersons.

- a) Committee Appointed Positions:
- a. Governance and Audit Committee
 - b. Budget and Finance Committee
 - i. Pursuant Article VII, Section 1, d), the Treasurer is the Ex Officio Chair of the Budget and Finance Committee.
 - c. Investment Committee
 - d. Scholarship and Stewardship Committee
- b) The membership of Standing Committees shall not be limited to individuals who are members of the Board of Directors if they bring special qualifications to the job. Article VIII Section 2a-d shall be applicable to the Standing Committees.
- c) Standing Committee Descriptions:
- a. **Governance and Audit Committee.** The Governance and Audit Committee is charged with providing an ongoing review of governance philosophy of the Board. The Committee shall ensure that assigned Board policies and procedures are up to date, communicated and understood by all Directors while fostering a diverse and engaged Board in pursuit of the Foundation's vision, anticipating opportunities, planning, and carrying out its mission with integrity and confidence.
 - i. The Governance and Audit Committee shall review and monitor the Foundation's audit activities and provide a venue for staff to present and vet

audit-related issues to better prepare information, materials or suggest policies for Board review, consideration, and decision-making. The Chairman of the Governance and Audit Committee is appointed by the Chairperson of the Board and serves as a member of the Board's Executive Committee. At least one member of the Governance and Audit committee should meet the criteria of financial expert and have adequate financial savvy to understand, analyze, and reasonably assess the financial statements of the organization and the competency of the auditing firm. This may be a non-director advisory member. The Chairperson of the Board may delegate other responsibilities to the Governance and Audit Committee as necessary.

ii. The Governance and Audit Committee shall:

1. Advise the Board on the selection of new and reelected Directors who possess the right combination of skills, contacts, and experience needed to fulfill the Foundation's goals. Further, manage the process for the review, selection, interview and recruitment of candidates for Directors for the Board.
2. Periodically evaluate the Foundation's Articles of Incorporation and Bylaws and other governing documents and recommend to the Board any proposed amendments or modifications.
3. Work with University senior leadership to ensure that an annual audit is completed for the Foundation by independent Certified Public Accountants, review the annual audit, and present the findings to the Board.
4. Identify best practices in foundation governance and customizing them as appropriate for the foundation board.
5. Develop and win board approval of a written statement setting out the roles and responsibilities of each board member.
6. Plan for Officer leadership succession.
7. In coordination with the respective Board committee chairs, periodically assess the structure, charters and composition of the committees of the Board and recommend to the Chairperson and Executive Director any changes deemed appropriate.
8. In coordination with Board Committee chairs, periodically evaluate the functions of Board committees and recommend to the Board candidates for appointment to the Standing Committees and their committee chairs and consider periodic rotation of committee members.
9. As necessary, recommend to the Board the need to obtain the advice of outside consultants and professionals (including but not limited to retention of specific legal counsel or financial analysts) to advise the Governance and Audit Committee on matters within the scope of the bylaws.

10. Responsible for overseeing implementation and enforcement of the Foundation's conflict-of-interest policy.
 11. Evaluate internal controls, financial practices, and risk mitigation strategies.
 12. Responsible for the Board's formal Whistleblower Policy and for investigating Foundation-related ethics complaints.
 13. In coordination with the Chairperson and the Executive Director, develop and deliver new board member orientation and annual training on fiduciary and governance duties at the annual retreat.
- b. **The Budget and Finance Committee**. The Budget and Finance Committee shall review and monitor the Foundation's activities and provide a venue for staff to present and vet finance-related issues to better prepare information, materials or suggest policies for Board review, consideration, and decision- making. The Chairman of the Budget and Finance Committee is elected as Treasurer by the Board and serves as a member of the Board's Executive Committee.
- i. The Budget and Finance Committee shall:
 - ii. Oversee financial planning. During the strategic planning process, participate in the analysis of the external and internal environment that determines the future course for the Foundation. During the budgeting process, work closely with the University's senior financial staff to ensure that the process is carried out efficiently and to ensure that key elements of the strategic plan are addressed and that Board decisions are properly interpreted in the budget's numbers.
 - iii. Review and recommend the Foundation's operating budget before it goes to the full Board for approval. If capital expenditures are required, the Budget and Finance Committee shall originate a capital budget.
 - iv. Monitor that adequate funds are available for financial management tasks. When reviewing financial statements, keep track of the bottom line to spot red flags that may impact the Foundation's ability to provide adequate funding for planned budgeted activities.
 - v. Properly communicate the organization's financial health. Serve as a communication channel to the Full Board, translating financial data into meaningful terms that can be understood by the Directors. Particular attention should be paid to the implications of a report; and linking the financial health of the Foundation with its goals and strategies.
 - vi. Advise, review and recommend for approval financial transactions of significance to the Foundation and affiliated foundations such as financing arrangements, leases, bonds, supplemental spending and other exceptional items.
 - vii. As necessary, recommend to the Board the need to obtain the advice of outside consultants and professionals (including but not limited to retention of specific legal counsel or financial analysts) to advise the Budget and Finance

Committee on matters within the scope of the bylaws.

- viii. As the opportunity arises, work with the Executive Director and the Chairperson to identify opportunities for the Board to supplement budgeted funds with unobligated cash funds for special use projects of greatest need by the University. Such projects shall be presented to the full Board for final approval.
 - ix. Maintain and review multi-year financial forecasts to support strategic planning.
 - x. Monitor budget-to-actual financial results on at least a quarterly basis.
 - xi. Evaluate the organization's cash flow, reserve levels, and financial liquidity.
 - xii. Periodically review and recommend updates to financial policies and internal controls.
 - xiii. Ensure all restricted, grant, or endowed fund budgets align with donor intent and reporting obligations.
 - xiv. Recommend and oversee an operating reserves policy to support financial sustainability.
 - xv. Review policies and recommend appropriate insurance coverages.
- c. **Investment Committee.** The Investment Committee provides direction and recommendations to the Board of Directors for the investment of the financial assets of the Foundation, and those other assets for which the Foundation has fiduciary responsibility. The primary purpose of the Investment Committee is to prudently manage the investment and disbursement of assets of the Foundation and those managed by the Foundation, while maintaining prudent fiduciary standards in accordance with the Investment Policy Statement and all applicable financial requirements of an affiliated entity of the University.
- i. The Investment Committee shall:
 - 1. Maintain and annually review the Foundation's Investment Policy Statement (IPS). Evaluate investment policies, objectives, and guidelines and monitor same.
 - 2. Recommend to the Board to retain and review the services of investment advisors and monitor their performance. When necessary, the Committee shall show cause and recommend replacement of a retained investment advisor to the Board for consideration. If the Board votes to seek a new investment advisor, the Investment Committee shall propose a fair and equitable process to solicit bids for a new investment advisor. The Executive Committee has the authority to review and approve the solicitation process.
 - 3. Monitor the performance of Foundation investments and report on such performance to the Full Board at its quarterly meetings. The Committee shall also monitor investment performance relative to benchmarks and manage risk exposure.

4. Establish and oversee adherence to an endowment spending policy.
 5. Ensure compliance with donor restrictions and maintain reporting on fund designations.
- d. **Scholarship and Stewardship Committee.** The Scholarship and Stewardship Committee shall develop and implement a strategy to cultivate a culture of giving among stakeholders in support of the Foundation's mission. The Scholarship and Stewardship Committee shall have the authority and responsibility to administer scholarship awards from restricted gifts, as directed by the donor's intent, as specified in the award. The distribution of scholarship resources will be determined annually by the economic climate. The Chairperson of the Scholarship and Stewardship Committee is appointed by the Chairperson of the Board and serves as a member of the Board's Executive Committee. The Chairperson of the Board may delegate other responsibilities to the Scholarship and Stewardship Committee as necessary.
- i. The Scholarship and Stewardship Committee shall:
 1. Recommend a cumulative scholarship award amount to the full Board on an annual basis;
 2. Work closely with the Executive Director to ensure that the Board supports the ongoing efforts of the University's professional staff in fundraising efforts;
 3. Ensure that the Foundation's case for fundraising support is strong, current, and based on the Foundation's mission and goals;
 4. Develop expectations for personal financial contributions from the Board, communicate those expectations, provide leadership by giving, and ensure that all Board members make a personal financial contribution;
 5. Work with the Board of Trustees, the Board of Visitors, the National Alumni Association, the Student Government Association and other University Affinity groups to increase the financial giving rate to support student scholarships and other mission focused activities;
 6. Provide regular updates to the Board about opportunities to financially support Elizabeth City State University;
 7. Serve as the Board's liaison with the Elizabeth City State University's Office of University Advancement or other responsible office to execute the Foundation's Annual Founder's Gala and any other fundraising activities;
 8. Work closely with all other committees to maximize funding allocated to scholarships for students at Elizabeth City State University;
 9. Ensure that no Foundation scholarship award is made to an individual Board Member, Officer, or to a family member of such person unless the recipient of the award is determined by an independent awards committee or is overseen by Elizabeth City State University's

Financial Aid and Scholarship Office;

10. Review fund disbursements and selection practices to ensure compliance with applicable nonprofit, IRS, and anti-discrimination regulations;
11. Encourage recipient participation in donor recognition and alumni engagement initiatives; and
12. Work with the Executive Director to develop a strategy for Board Members to “thank” donors through handwritten notes, phone calls, or other means determined appropriate by the Executive Director.

Section 3. Special Committee and Task Forces. The Chairperson may appoint such special committees, subcommittees, or task forces as may be necessary or desirable and which are not in conflict with other provisions of these bylaws; and the duties of any such committees shall be prescribed by the Board of Directors upon their appointment.

Section 4. Vacancies. Any vacancy in the membership of any committee may be filled by an appointment made in the same manners as provided for the original appointment.

Section 5. Quorum. Unless otherwise provided in the resolution of the Board creating a committee, a majority of the members of the committee shall constitute a quorum. Unless otherwise provided in the resolution of the Board creating a committee, a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 6. Rules. Each committee may adopt rules for its own management not inconsistent with these bylaws or with other rules adopted by the Board.

ARTICLE IX. IDEMNIFICATION AND IMMUNITY OF DIRECTORS.

Section 1. Indemnification. No Director or Officer, Covered Person, who acts in good faith shall be liable to the Foundation for any act or omission on behalf of the Foundation. In the event that any Covered Person is a party to or is threatened to be made a party to any pending or proposed suit or action, whether civil, criminal, administrative, or investigative for any act or omission by such Covered Person on behalf of the Foundation, said Covered Person shall be indemnified completely and as fully as possible under North Carolina law, unless it is shown by clear and convincing evidence that said Covered Person acted with reckless disregard for the best interest of the Foundation, in which case, said Covered Person shall be entitled to no indemnity under this article.¹²

Section 2. Terms and Definitions for Purposes of This Article.

- a) Covered Person. A Covered Person shall include any person who at any time serves or has served as a Director or Officer of the Foundation.

¹² N.C.G.S § 55A-8-42(e).

- b) Action. An action shall include any threatened, pending, or completed civil, criminal, administrative, investigative suit or proceeding, any appeal therefrom, and any inquiry or investigation that could lead to such a suit or proceeding.
- c) Covered Expenses. The Foundation may reimburse or indemnify a Covered Person against:
 - a. All reasonable expenses, including without limitation reasonable attorney's fees, actually and necessarily incurred by him/her in connection with any pending, threatened or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and a derivative action, seeking to hold him/her liable by reason of or arising out of his/her status as such or his/her activities in any of the foregoing capacities;
 - b. Payments made by him/her in satisfaction of any judgment, money decree, fine, penalty or settlement (including any excise tax assessed with respect to an employee benefit plan) for which he/she may have become liable in any such action, suit or proceeding; and
 - c. All reasonable expenses incurred in enforcing the indemnification rights provided herein.
- d) Advanced Payment of Expenses. Covered Expenses may be paid by the Foundation in advance of final disposition of the action if authorized pursuant to Section 6 below. Any advance payment shall be made only upon receipt of an undertaking by the Covered Person to repay such amount, unless it shall ultimately be determined that the Covered Person is entitled to be indemnified by the Foundation against such expense.
- e) Standard of Care. The Foundation shall not indemnify a Covered Person for Covered Expenses if his/her acts or omissions were, at the time taken, known or believed by him/her to be clearly in conflict with the best interest of the Foundation, or if he/she received an improper personal benefit.
- f) Determination and Evaluation of Indemnification. The determination to indemnify a Covered Person, and the amount and terms of the indemnification shall be made:
 - a. By the Foundation Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the action;
 - b. If a quorum cannot be obtained under subdivision "a", by majority vote of a committee duly designated by the Board (in which conflicted directors who are parties may not participate), consisting solely of two or more Directors members not at the time parties to the action;
 - c. If a quorum of the Foundation Board of Directors cannot be obtained under subdivision "a" and a committee cannot be designated under subdivision "b", then by special legal counsel selected by a majority vote of the Foundation Board of Directors (in which conflicted directors who are parties may not participate).
 - d. Evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to

reasonableness of expenses shall be made by those entitled under subdivision “c” above to select counsel.

- g) Reliance. Any Covered Person who serves or has served in any of the aforesaid capacities for or on behalf of the Foundation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the rights of reimbursement and indemnification provided for herein. Such rights of reimbursement and indemnification shall inure to the benefit of the legal representatives of such Covered Persons and shall include amounts paid in settlement.
- h) Non-exclusivity. The indemnification provided in Article XIII, Section 1 above shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Organizational Documents, or any agreement, vote of disinterested Directors, or otherwise, both as to any action to his or her official capacity and as to any action in another capacity while holding such office, and shall continue indefinitely as to any former Director, Officer, employee, or agent, and shall inure to the benefit of their heirs, executors, and administrators.
- i) The Foundation may, in its sole discretion, wholly or partially indemnify and advance expenses to any agent or employee of the Foundation to the same extent as provided herein for Covered Persons.

Section 3. Insurance. To the extent permitted by North Carolina law, the Foundation may, working in collaboration with the University and risk management personnel, or approved vendors, purchase and maintain errors and omissions insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Foundation. Further, the Foundation should evaluate the potential risks arising from the operation of the Associated Entity and obtain commercially reasonable amounts of general liability and directors’ and/or officers’ insurance.¹³

Section 4. Bonding of Officers. Officers of the Foundation any University staff who have check-signing authority or who handle cash or negotiable instruments on behalf of the Foundation must be bonded in an amount determined to be reasonable by the Foundation’s Board of Directors, in collaboration with the University.

Section 5. Indemnification Contract. The Foundation may enter into an Indemnification Agreement with individual Directors and Officers. An action by Directors to approve an Indemnification Agreement, which includes the Directors voting on the action, will not be considered a conflict of interest for any directors.

Section 6. Side A DIC. In addition to a blanket or group liability insurance protection for Foundation Directors and Officers, the Foundation may provide individual liability insurance for Directors and Officers. The Side A, DIC (Difference in Condition), or similarly structured insurance coverage, can offer individual shield for Directors and Officers.

Section 7. Immunity. A person serving as a Director or Officer of the Foundation shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- a) Is compensated for his services beyond reimbursement for expenses;

¹³ N.C.G.S § 55A-8-50

- b) Was not acting within the scope of his official duties;
- c) Was not acting in good faith;
- d) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- e) Derived an improper personal financial benefit from the transaction; Incurred the liability from the operation of a motor vehicle; or
- f) Is a defendant in an action brought because the officer is found to have made an unauthorized loan or guaranty or other form of security in violation of State law. N.C.G.S. 55A-8-33.

ARTICLE X. THE OPERATING AGREEMENT.

The University of North Carolina (UNC) System encourages the establishment of private organizations, known as Associated Entities, to support the constituent institutions and other units of the University, consistent with G.S. 116-30.20. The Foundation is a longstanding associated entity approved by Elizabeth City State University. As an associated entity, the Foundation is affiliated with Elizabeth City State University pursuant to the written approval of the Chancellor and Board of Trustees. In recognition of and to facilitate such support, the Foundation is permitted pursuant to a written agreement with the above officials to represent that it is affiliated with the University. Further, the Foundation benefits from the University's resources in carrying out its activities.

Section 1. Written Agreement Required. The Foundation must enter into a written agreement known as the "Operating Agreement" with the University in which the Foundation agrees to abide by the policies and regulations established by the University System and the Elizabeth City State University. The Foundation may only use University System or Elizabeth City State University assets, facilities, and personnel pursuant to the terms of the written agreement. The Operating Agreement shall be reviewed and renewed by mutual consent of both the University and the Foundation Board every three years. All reports required by the Operating Agreement shall be submitted both to the Chancellor and to the Foundation's Board of Directors to ensure joint accountability. Reports submitted to the University shall also be made publicly available in accordance with nonprofit transparency standards. The Operating Agreement must include the following but is not limited to:

- a) **Reimbursement of Costs.** Any reimbursement to the Foundation or the University for services the Foundation or the University provides to the Foundation must be made pursuant to a written agreement between the University System or the Elizabeth City State University and the Foundation entered into before the service is provided.
- b) **Control of University Personnel.** When University personnel provide services for the Foundation and there arises a conflict between the University and the Foundation, the University employee must comply with the policies, regulations, and directives of the University.

c) **Reports Required to be Submitted by Associated Entity to University.**

The Foundation must file annual reports with the Chancellor of Elizabeth City State University, which shall be submitted to the Board of Governors through the president, covering the following items:

- a. A list of all members of the Foundation's governing body;
- b. A copy of the publicly disclosed portion of the Foundation's Form 990 or other series 990 form, or other similar information return;
- c. A copy of the Foundation's audit report and related management letters and responses to letters and responses to management letters;
- d. A list of current real estate holdings and current funding commitments for capital projects; and
- e. A report of all real property activity and completed and ongoing capital projects since the last reporting period.

d) **Inspection of Information.** Consistent with University System regulations, at the request of the Chancellor of the Elizabeth City State University or the Chair of the Board of Trustees, the Foundation Chairperson must meet with the Chancellor, the president, their designees, or member of the University's Board of Trustees and allow that person to inspect any information requested, subject to appropriate confidentiality protections.

e) **Foundation Communications.** The Foundation must conduct business in its own name, and all correspondence, advertisements, and other communications by the Foundation must clearly indicate that the communication is from the Foundation and not from the Elizabeth City State University or the University System.

f) **Associated Entity Courses and Seminars.** The Foundation may not offer any course or seminar in which the University's name is used without first obtaining the permission of the institution(s) whose name(s) will be used.

g) **Indemnification of the University.** The Foundation shall indemnify and hold the Elizabeth City State University harmless from any damages or liabilities that the Foundation incurs as a result of the Foundation's actions.

ARTICLE XI. FINANCES.

Section 1. Use of Gifts and Income. All gifts to the Foundation or income not otherwise designated by the donor shall go into the general fund of the Foundation and shall be used exclusively for the use and benefit of Elizabeth City State University in accordance with the general purposes of the Foundation. The Foundation may receive, manage, invest, and disburse conditional gifts only if such gifts are for the exclusive use and benefit of Elizabeth City State University.

The phrase "exclusive use and benefit of Elizabeth City State University" shall include gifts for the benefit of any separate or independent organization which is supportive of or affiliated with

Elizabeth City State University or its programs and functions, provided that such organization is:

- a) Organized exclusively for charitable, scientific, or educational purposes and for the exclusive use and benefit of Elizabeth City State University, and
- b) Qualified as an organization exempt from income tax under 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law).

The Board may from time to time provide procedures for the establishment of special or designated funds to be administered by the Board in accordance with the condition of their creation.

Section 2. Contributions and Disbursements. All contributions received by the Foundation shall be deposited in a special account or accounts in such banks, trust companies, or other depositories as the Board may select. All disbursements shall be subject to examination at any reasonable time, upon request, by any Director.

- a) **Grant of Funds.** The funds of the Foundation shall be used solely for the purposes specified in the Organizational Documents and shall be paid to or for the benefit of Elizabeth City State University.
- b) **Prohibited Use of Funds.** The funds of the Foundation shall not be expended in a manner contrary to the policy as stated in the Articles of Incorporation or adopted by the Board of Directors. In addition, the funds of the Foundation shall not be expended in manners contrary to policies as contained in section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) and in Chapter 55A of the General Statutes of North Carolina, as the same may be from time to time amended.
- c) **Reimbursable Expense.** Any funds of the Foundation applied to pay travel or other authorized expenses of any individual shall be paid only upon receipt of itemized and signed vouchers.
- d) **Gifts and Donations.** Any person making gifts to the Foundation may designate the purpose(s) for which the gift shall be applied and specify the terms and conditions for administration and distribution consistent with the policy and practice of the Foundation, which shall be known as a restricted gift; or any such person may make a gift to the Elizabeth City State University Foundation, without any such designation or limitation, which shall be known as an unrestricted gift.
- e) **Restricted Gifts.** In the case of a restricted gift, the Foundation shall follow the directions of the instrument or gift, provided, however, if any object or purpose for which any gift is made fails or becomes impossible in performance, or if it is the opinion of the majority of the Directors of the Foundation that the object or purposes of this or such restricted gift or donation has ceased to be within the purpose of this Foundation, then such gift or donation shall no longer be held and administered for any such specific

restricted purpose and shall thereafter be held and administered by the Foundation for a kindred purpose or as an undesignated gift or donation provided prior notices is given and authorization received from the donor.

- f) **Unrestricted Gifts.** Unrestricted gifts may be merged with other gifts and the funds and properties so merged may be held and administered by the Foundation as a part of its general assets; or if the majority of the Board of Directors decides to do so, any unrestricted gift may be held and administered by the Foundation separately.
- g) **Investments.** The Foundation shall have the right to retain all or any part of any securities or property acquired by it. The Foundation shall not have duty to diversify any securities or property received by it if these securities or property remain in the form received.
- h) **Income from Unrestricted Gifts and Donations.** The income from the unrestricted gifts and donations shall be used by the Foundation for the benefit of Elizabeth City State University as may be selected and decided upon by the majority of the Board of Directors of this Foundation, and as aforesaid, or may convert all or any part of such accumulated income into principal funds in the same manner as if such accumulated income had been given and donated to the Foundation as an unrestricted or undesignated gift.
- i) **Operating Expenses.** Operating expenses of the Foundation shall be paid out of gifts to the Foundation that are intended by the donor to be used for operating expenses, unrestricted gifts, or other income generated through fees or income interest. The Foundation may use gifts that are intended by the donor to be used for operating expenses for other purposes so long as the Foundation's use does not violate the restrictions imposed by the donor.

Section 3. Budget. A statement of the proposed budget for each year shall be prepared by the Executive Director and submitted to and approved by the Budget and Finance Committee, the Executive Committee, and the Board. Changes to the budget during the year must be approved by the Budget and Finance Committee and the Executive Committee.

Section 4. The Fiscal Year. The Fiscal year of the Foundation shall be July 1 to June 30.

ARTICLE XII. EXECUTION OF DOCUMENTS.

Section 1. Execution of Contracts and Deeds. Except as otherwise provided by resolution of the Board, and so permitted by Article XIII, Section 1, all contracts, deeds, mortgages, pledges, transfers, and other written documents binding upon the Foundation shall be executed on behalf of the Foundation by the Chairperson or the Executive Director of the Foundation with the Secretary attesting, and the corporate seal shall be affixed thereto.

Section 2. Voting Securities Owned by the Foundation. Unless otherwise ordered by resolution of the Board, the Chairperson, the Executive Director, the Secretary and the Treasurer shall have full authority on behalf of the Foundation to attend, to act, and to vote at any meetings

of the stockholders, bondholders, or other security holders of any corporation, trust, or association in which the Foundation may hold securities. At any such meeting the Executive Director and Treasurer shall possess and may exercise all the rights and powers incident to the ownership of such securities. The Board may, by resolution, confer like authority upon any other person or persons.

Section 3. Sale of Securities. Unless otherwise ordered by resolution of the Board, the Executive Director and Secretary or Treasurer are authorized and empowered jointly to buy and sell stock held or owned by the Foundation, for such consideration as may be authorized by the Board, and to that end they are further authorized to execute all bills of sale, transfers, assignment, and other documents necessary or convenient for effectuating such purpose. The Executive Director and Secretary or Treasurer are further authorized to give the proper notices of any such action, have all such transactions registered and noted on the books and records of this or any other corporation or partnership, and to do all things necessary or convenient to accomplish such purchases or sales.

ARTICLE XIII. CONTRACTS, CHECKS, DEPOSITS, AND FUNDS.

Section 1. Contracts. Notwithstanding Article XII, Section 1, the Board of Directors may authorize any Officer or Officers, agent or agents of the Foundation, in addition to the Officers so authorized by these bylaws, to enter any contract or execute and deliver any instrument in the name and on behalf of the Foundation. Such authority must be in writing and may be general or confined to specific instances. When the Board approves a budget that includes a line item for a specific purpose and that purpose requires a contract it is understood by the Board and the Officers that the Chairperson may sign a contract in accordance with the budget authority.

Section 2. Checks, Drafts, Notes, and Accounting Transactions for the Foundation. All checks, drafts, or other orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Foundation shall be issued through the University's financial services system after the Foundation's required signature authority has been recorded. Financial records of The Foundation are uniquely numbered in the University's financial records system, thus providing separate accounting by activity as well as the capability for generating summary reports covering the entire Foundation. An annual audit and tax return are prepared by an external, independent auditor. The audit reflects a comprehensive review of the business transactions of The Foundation and includes a review of internal controls.

Section 3. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE XIV. RECORDS RETENTION AND INSPECTION.

Section 1. Records Retention and Destruction. The Foundation is required to monitor, justify, and carefully administer a records retention and document destruction process by Federal law. It is a Federal crime to alter, cover up, falsify, or destroy any document to prevent its use in an official proceeding. Certain documents, including electronic files, must be protected if an audit

other than in the ordinary course, investigation into wrongdoing, or litigation is anticipated or underway. The Executive Director shall submit a Records Retention and Destruction policy to the Board of Directors for review and approval. The policy shall be reviewed no less than every five years by the Governance and Audit Committee and, if necessary, changes shall be made by the Full Board.

Section 2. Requests Made By Members. To ensure both the trust of key stakeholders that a public interest is being served, subject to any confidentiality concerns held by the Foundation Board and Officers, all Foundation meeting minutes (to include annual and special meetings, financial audit reports, and information regarding significant financial transactions must always be available for inspection and review. Any questions by any person eligible to receive information shall be addressed to the Board of Directors.¹⁴

1) Required Provisions of the Request.

The request must state the name of the applicant, the reason for the request and that the information shall in no way be made public or shared with any other member in a way that will jeopardize the Foundation.

2) Confidentiality.

In order to keep the records of the Foundation confidential, records shall not be released to any outside agency, person or entity unless due process has been served and a certified subpoena has been personally delivered. This includes the IRS, except under the provisions of section 7611 which shall be limited only to information deemed to be relevant to the inquiry being made. At all times the IRS will be expected to comply with all of the provisions of section 7611.

3) Denying a Request

The Foundation Board of Directors reserves the right to deny such a request for any of the following reasons:

- a) The request is considered by the Foundation Board of Directors and deemed to be frivolous.
- b) The applicant making the request has not stated a proper purpose for the inquiry.
- c) The member has not adequately provided the required information on any request form prescribed and approved by the Foundation Board of Directors.

4) Privacy

The Foundation shall diligently watch to keep private all records concerning Foundation work product, polity, doctrine, and donor information. The Foundation will not disclose any records that may compromise data privacy for its contributors.

ARTICLE XV. CONFLICT OF INTERESTS. ¹⁵

Section 1. Disclosure Requirement.

¹⁴ N.C.G.S § 55A-16-02

¹⁵ N.C.G.S § 55A-8-31

- a) All Directors and Officers shall sign and have filed in the Foundation office a Conflict of Interests Statement annually.
- b) Conflict of Interests exists when there is a conflict (or even an appearance of a conflict) between an individual's personal, financial or professional interests and his or her legal fiduciary or ethical obligations to the Foundation. A Conflict of Interests can arise when a Director or Officer takes actions or simply has interests that might make it difficult to perform his or her duties to the Foundation objectively and, therefore, effectively.
- c) Conflict of Interest may also arise when a current or former Board and committee members; current or former employees of the Foundation; personal, familial or business relationships (Relationships) receives improper personal benefits as a result of his or her relationship with the Foundation, whether received directly from the Foundation or from a third party.
- d) Any Director of the Board or Officer who has a direct or indirect financial interest in any contract or transaction with the Foundation must disclose such interest to the Board. Such Director or Officer shall not participate in discussions or vote regarding the subject matter.
- e) In connection with any actual, potential ,or perceived Conflict of Interests, the Director or Officer must disclose the existence of such Conflict of Interests immediately and be given the opportunity to disclose all material facts to the Board so that the Board can make an informed decision.
- f) No Director or Officer shall participate in the discussion or vote on any matter in which they have a personal or financial interest. Such Director or Officer should recuse himself or herself from involvement in any discussion or vote in which the Director or Officer believes he or she may have or has Conflict of Interests, with or without going through the formal process of determining whether Conflict of Interests exist. This is to err on the side of extreme caution and to protect both the Foundation and the Director or Officer. Recusal does not mean simply refraining from the discussion or vote, it means removing oneself entirely from the Boardroom during the discussion or vote so that the potentially conflicted Director or Officer's presence cannot be seen as influencing his or her colleagues during such discussion or vote. The Director or Officer in question should also be excluded in the quorum count for that meeting.
- g) All Conflicts of Interests and potential and perceived Conflicts of Interests must be disclosed to the Board will be made a matter of record in the meeting minutes during which the disclosure was made, which shall also note that the Director or Officer with potential or actual Conflict of Interests recused him or herself entirely from both the discussion and the vote – meaning that he or she was not present in the Boardroom for either and was not included in the quorum count for that meeting. The minutes of the meeting shall contain the names of the persons who:
 - a. Disclosed or otherwise were found to have actual, potential or perceived Conflict of Interests, the nature of the interest, any action taken to determine whether Conflict of Interests were present, and the Board's decision as to whether actual or perceived Conflict of Interests in fact existed.

- b. Were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement and a record of any votes taken in connection with the proceedings.
- h) Except for contracts and transactions between the Foundation and any entity affiliated with it, any contract or other transaction between either the Foundation and any Director, Officer or committee member (within their individual capacities), or the Foundation and any other corporation, firm, association or other entity in which any Director, Officer or committee member has a pecuniary, financial, ownership, equity, participation, decision-making or other significant interest, may be declared void or voidable by the Board of Directors unless all of the following conditions shall be met:
 - a. such interest is disclosed in advance to the Board of Directors, as reflected in the minutes of a meeting of the Board of Directors;
 - b. all matters pertaining thereto which might reasonably be construed to be adverse to the Foundation's interest are disclosed in good faith in advance by such person, as reflected in the minutes of a meeting of the Board of Directors;
 - c. such contract or transaction is fair and reasonable to the Foundation at the time such contract or transaction is authorized; and
 - d. such contract or transaction shall be authorized by the affirmative vote of at least two-thirds (2/3) of the Directors present at a meeting at which a quorum was present.
- i) If the Board or Board Chair has reasonable cause to believe a Director or Officer has failed to disclose actual or potential Conflict of Interests, he/she shall inform the Director or Officer of the basis for such belief and afford the Director or Officer an opportunity to explain the alleged failure to disclose. ^[SEP]If, after hearing the Director's or Officers's response and after making further investigation as warranted by the circumstances, the Board or Board Chair determines that the Director or Officer has failed to disclose actual or potential Conflict of Interests, it shall take appropriate disciplinary and corrective action accordingly.

ARTICLE XVI. WHISTLEBLOWER PROTECTION.

Section 1. Ethics and Standards. The Foundation requires members of the Board of Directors, Officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of the Elizabeth City State University Foundation must practice honesty and integrity in fulfilling Board responsibilities and comply with all applicable laws and regulations.

Section 2. Reporting Responsibility. The Foundation encourages and enables University employees and Board Members to raise serious concerns internally so that the Foundation may address and correct inappropriate conduct and actions. It is the responsibility of all Board Members, Officers, employees and volunteers to report concerns about violations of the Foundation's organizational documents, bylaws, policies, principles and practices, or suspected

violations of law or regulations that govern the Foundation's operations.

Section 3. Zero Tolerance For Retaliation. It is contrary to the values of the Foundation for anyone to retaliate against any Board Member, Officer, employee or volunteer who in good faith reports an ethics violation, or a suspected violation of law, such as a complaint of discrimination, or suspected fraud, or suspected violation of any regulation governing the operations of the Foundation. An employee who retaliates against someone who has reported a violation in good faith shall be referred to the Executive Director and, when appropriate, the Chancellor for a review of his or her actions.

Section 4. Reporting Procedure. The Foundation has an open door policy and suggests that employees share their questions, concerns, suggestions or complaints with their supervisor. If the employee is not comfortable speaking their supervisor or are not satisfied with their supervisor's response, the employee is encouraged to speak with the Foundation's Executive Director, and then the Foundation Board's Governance and Audit Chairperson. Supervisors and managers are required to report complaints or concerns about suspected ethical and legal violations in writing to the Foundation's Executive Director who has the responsibility to investigate all reported complaints. Employees with concerns or complaints may also submit their concerns in writing directly to their supervisor or the Executive Director.

Section 5. Accounting and Auditing Matters. The Executive Director shall immediately notify the Governance and Audit Committee of any concerns or complaint regarding corporate accounting practices, internal controls or auditing and work with the committee until the matter is resolved.

Section 6. Acting In Good Faith. Anyone filing a written complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious offense.

Section 7. Confidentiality. Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

ARTICLE XVII. TAX-EXEMPT STATUS.

Section 1. Tax-Exempt Status. The affairs of the Foundation at all times shall be conducted in such a manner as to assure its status as a "publicly supported" organization as defined in section 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code, to qualify for exemption from tax pursuant to section 501(c)(3) of the Internal Revenue Code.

Section 2. Lobbying and Political Activities. The Foundation must comply with all provisions of the Internal Revenue Code and all state laws regarding lobbying and political activity.

ARTICLE XVIII. AMENDMENTS.

Section 1. Power to Amend Bylaws. The Board of Directors shall have the power to alter, amend, or repeal these bylaws, or adopt new bylaws by a majority vote of the Full Board.

ARTICLE XIX. ADOPTION OF BYLAWS AND EFFECTIVE DATE.

Section 1. Adoption of Bylaws. These bylaws as revised were adopted by resolution of the Board of Directors on December 12, 2025, and became immediately effective upon adoption.

Section 2. Review Period. These bylaws shall be reviewed by the Board of Directors no later than every four (4) years.

CERTIFICATE

The foregoing Elizabeth City State University Foundation Bylaws (version 2025) were duly approved by vote of the Foundation Board of Directors on December 12, 2025, and are herein duly adopted.

Corporate Secretary
Elizabeth City State University Foundation.

SEAL