

3-20-2014

## Bylaws of the Board of Trustees, Effective 2014-03-20

University of Dayton

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# Bylaws of the Corporation

## BYLAWS OF THE CORPORATION

Approved November 4, 1970  
Amended August 31, 1972  
Amended December 21, 1982  
Amended May 3, 1988  
Amended January 15, 1999  
Amended December 14, 2006  
March 20, 2014

### *Preamble*

The Members of the University of Dayton Corporation have drawn up these Bylaws to establish operational procedures for the implementation of the duties and obligations accepted by them in accord with the Articles of Incorporation of the University of Dayton, as amended, and the applicable laws of the State of Ohio.

### **ARTICLE I: MEMBERSHIP**

(a) The Members of the University of Dayton Corporation shall consist of (1) all Members of the Corporation, Marianists of the United States, Inc., and (2) the Chairperson, Vice Chairperson, and Secretary, all of the Board of Trustees of the University of Dayton.

(b) Membership shall terminate with the appointment of a successor or cessation of the qualifications for appointment.

(c) All references to the “Society of Mary” shall refer to the Society of Mary known as the Marianists. References to the Province of the United States of the Society of Mary refer to the unit of that Society of Mary operating under Marianists of the United States, Inc. and its successors and assigns.

### **ARTICLE II: OFFICERS OF THE CORPORATION**

(a) The Officers of the Corporation shall consist of a Chairperson, Vice Chairperson, and Secretary.

(b) The Provincial of the Province of Cincinnati of the Society of Mary shall be the Chairperson of the Corporation, Vice Chairperson of the Board of Trustees *ex officio*, and a member of the Executive Committee of the Board of Trustees.

(c) The Assistant Provincial of the Province of the United States of the Society of Mary shall be the Vice Chairperson of the Corporation.

(d) The President of the University shall be *ex officio* the Secretary of the Board of Trustees, and the Secretary of the Board of Trustees is the Secretary of the Corporation.

(e) They shall perform the duties assigned to them by the Members.

(f) Assistant officers, such as Assistant Secretaries and Assistant Treasurers, shall act as assistants to and under the direction of their superior officers, shall be vested with all the powers and shall be required to perform any of the duties of their superior officers in their stead unless certain powers and/or duties are withheld by the superior officers in writing. They shall perform such other and further duties as may from time to time be required of them by the Board of Trustees and/or the President.

### **ARTICLE III: MEETINGS**

(a) It shall be the duty of the Chairperson of the Corporation to call and preside over the Annual Meeting which shall be held between November 15 and December 31 of each year at a time and place to be determined by the Members.

(b) Special meetings of the Members shall be called by the Chairperson of the Corporation or upon the request of a majority of the total number of Members.

(c) Written notice of all meetings shall be given to the Members not less than five days before the date of the meeting.

(d) Secretary of the Corporation is the Secretary of the Board of Trustees.

(e) The Secretary of the Corporation shall be responsible for the minutes which shall be deposited at the principal office of the Corporation.

(f) In case of the death or permanent incapacity of the Chairperson of the Corporation, the Vice Chairperson of the Corporation shall assume these duties until a Chairperson of the Corporation has been elected and assumes office.

(g) A quorum shall consist of a majority of the total number of current members.

(h) Any action which might be taken at a meeting of the Members may be taken without such meeting if authorized in writing by all the current Members, provided only that evidence of such action be filed in the permanent record or minutes relating to meetings of the Members.

## **ARTICLE IV: POWER AND AUTHORITY OF THE MEMBERS**

(a) The Members of the Corporation shall be vested with the power and authority granted to them in the Articles of Incorporation, as amended, and the applicable laws of the State of Ohio for the operation of the University of Dayton.

(b) Of these powers the Members shall exercise directly the following:

(1) The nomination of candidates for election to the Board of Trustees, and removal of members of the Board of Trustees of the University of Dayton;

(2) Approval of the Constitution of the University of Dayton, the Bylaws of the Corporation, and amendments to the Articles of Incorporation, said Constitution and Bylaws of the Corporation.

(c) Approval by two-thirds vote of the Members shall be required before the Trustees may take any action with respect to the following:

(1) The merger or consolidation of the Corporation with another corporation;

(2) The sale, encumbrance, or alienation of all or a substantial portion of the assets of the Corporation;

(3) Partial or total dissolution of the Corporation.

(d) The Members shall delegate authority for the governance of the University to a Board of Trustees constituted in accord with the provisions of the Bylaws of the Corporation and the Constitution of the University.

(e) The Members shall determine the number and manner of selection of said Trustees.

(f) At any regular or special meeting the Members of the Corporation shall make nominations to fill vacancies on the Board of Trustees from a list of names of candidates prepared by the Committee on Trustees of the Board of Trustees.

(g) Nominations to fill vacancies on the Board shall be presented by the Chairperson of the Board of Trustees at any regular or special meeting of the Board of Trustees.

## **ARTICLE V: LIMITATION OF LIABILITY**

No person shall be liable to the Corporation for any loss or damage suffered by it on account of any action taken or omitted to be taken by him/her as a Member, Trustee, or officer of the Corporation, if such person performs his/her duties, including his/her duties as a member of any committee of the Board of Trustees upon which he/she may serve, in good faith and in a manner he/she reasonably believes to be in the best interests of the Corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In

performing his/her duties, a Trustee or officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, that are prepared or presented by: (i) one or more Trustees, officers or employees of the Corporation whom the Trustee or officer reasonably believes are reliable and competent in the matters prepared or presented; (ii) counsel, public accountants or other persons as to matters that the Trustee or officer reasonably believes are within the person's professional or expert competence; (iii) a committee of the Board of Trustees upon which he/she does not serve, duly established in accordance with a provision of the Articles of Incorporation, the Constitution, these Bylaws of the Corporation, and/or the Bylaws of the Board of Trustees, as to matters within its designated authority, which committee the Trustee or officer reasonably believes to merit confidence.

#### **ARTICLE VI: INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS OF THE CORPORATION**

(a) The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, including but not limited to an action by or in the right of the Corporation, by reason of the fact that he/she is or was a Member, Trustee, committee member, or officer of the Corporation, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit, or proceeding, if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, if he/she had no reasonable cause to believe his/her conduct was unlawful, except that no indemnification shall be made in respect of any of the provisions of (c) below. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon plea of nolo contendere or its equivalent, shall not create, of itself, a presumption that the person did not act in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that his/her conduct was unlawful.

(b) The Corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, including but not limited to an action by or in the right of the Corporation, by reason of the fact that he/she is or was an employee, agent or volunteer of the Corporation, or is or was serving at the request of the Corporation as a trustee, director, officer, employee, agent or volunteer of another domestic or foreign nonprofit corporation or corporation for profit, or a partnership, joint venture, trust, or other enterprise, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit, or proceeding, if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, if he/she had

no reasonable cause to believe his/her conduct was unlawful, except that no indemnification shall be made in respect of any of the provisions of (c) below. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon plea of nolo contendere or its equivalent, shall not create, of itself, a presumption that the person did not act in good faith and in a manner he /she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that his/her conduct was unlawful.

(c) No indemnification shall be made in respect of any of the following:

(1) Any claim, issue or matter as to which such person is adjudged to be liable for negligence or misconduct in the performance of his/her duty to the Corporation. Notwithstanding the foregoing, a person may be indemnified to the extent that the court of common pleas or the court in which the action or suit was brought determines, upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court considers proper;

(2) Any action or suit in which liability is asserted against a director or Trustee and that liability is asserted only pursuant to Section 1702.55 of the Ohio Revised Code.

(d) To the extent that a Member, Trustee, committee member, officer, employee, agent, or volunteer has been successful on the merits or otherwise in defense of any action, suit, or proceeding (or any claim, issue, or matter in such an action, suit, or proceeding) that could be indemnified pursuant to this Article VI, he/she shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him/her in connection with that action, suit, or proceeding (or such successful claim, issue, or matter in such action, suit, or proceeding).

(e) Unless ordered by a court and subject to the above provisions, any indemnification under this Article VI shall be made by the Corporation only as authorized in the specific case, upon a determination that indemnification of the Member, Trustee, committee member, officer, employee, agent, or volunteer is proper in the circumstances because he/she has met the applicable standard of conduct set forth in this Article VI, and, if made pursuant to section (b) of this Article VI, upon a determination that such indemnification is in the best interest of the University. Such determination shall be made in any of the following manners:

(1) By a majority vote of a quorum consisting of Trustees of the Corporation who were not and are not parties to or threatened with the action, suit, or proceeding referred to in this Article VI;

(2) Whether or not a quorum as described above is obtainable, and if a majority of a quorum of disinterested Trustees so directs, by a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has

performed services for the Corporation or any person to be indemnified within the past five years;

(3) By a majority vote of the Members of the Corporation; or

(4) By the court of common pleas or the court in which the action, suit, or proceeding referred to in this Article VI was brought.

(f) The Corporation may purchase and maintain insurance on behalf of any person who is entitled to indemnity and/or indemnified pursuant to sections (a), (b), (d), and/or (e) of this Article VI, and the indemnification provisions of this Article VI shall be to the extent not covered by any such insurance.

(g) If an action or suit by or in the right of the Corporation is involved, any determination made by the disinterested Trustees under this Article VI or by independent legal counsel under this Article VI shall be communicated promptly to the person who threatened or brought such action or suit and, within ten days after receipt of such notification, such person shall have the right to petition the court of common pleas or the court in which such action or suit was brought to review the reasonableness of such determination.

(h) If a Member, Trustee, committee member, officer, employee, agent, or volunteer who is potentially indemnified pursuant to this Article VI signs a document acceptable to the Corporation by which he or she agrees to repay the Corporation if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation, then the Board of Trustees, in its sole discretion, may direct the Corporation to pay that person's expenses, including attorney's fees, as they are incurred, in advance of the final disposition of the action, suit, or proceeding.

(i) The indemnification authorized by this Article VI is not exclusive of, and shall be in addition to, any other rights granted to those seeking indemnification, pursuant to the Articles of Incorporation, these Regulations, any agreement, approval of a majority of the Members or disinterested Trustees, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, and shall continue as to a person who has ceased to be a Member, Trustee, committee member, officer, employee, agent, or volunteer and shall inure to the benefit of the heirs, executors, and administrators of such person.

(j) Any indemnification authorized herein shall be permitted only to the extent that it does not constitute an act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code or a taxable expenditure as defined in Section 4945(d) of the Internal Revenue Code. The foregoing indemnification is subject to the terms, conditions, and procedures set forth in Ohio Revised Code Section 1702.12 (E) (1) through (8) as presently exists or may hereafter be amended, and said Section and further amendments are incorporated herein as if fully set forth herein.

## **ARTICLE VII: DISSOLUTION OF THE CORPORATION**

(a) In case of dissolution of this Corporation, all properties, real or personal, of this Corporation shall revert to Marianists of the United States, Inc., its successors and assigns, either to be used for the purposes of said Marianists of the United States, Inc., according to its equity, or to be assigned to some other nonprofit corporation operating within the purposes of the present Corporation.

## **ARTICLE VIII: AMENDMENTS**

(a) These Bylaws may be amended or repealed at any regular or special meeting by a two-thirds vote of the total number of Members of the Corporation, provided that such proposed amendment has been given in writing to the Members at least five days prior to the meeting.

(b) Notice of all proposed amendments and action thereon shall also be communicated to the Board of Trustees of the University.