

*Approved and Adopted by the  
Earlham Foundation, Inc. Board  
of Directors to be Effective on  
March 13, 2020*

**AMENDED AND RESTATED**  
**BYLAWS**  
**OF**  
**EARLHAM FOUNDATION, INC.**

**ARTICLE I**

**General**

**Section 1.**     **Name.**   The name of the corporation is Earlham Foundation, Inc. (the “Corporation”).

**Section 2.**     **Fiscal Year.** The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June of the next succeeding year.

**Section 3.**     **Registered Agent and Office.** The post office address and location of the principal office and of the registered office of the Corporation is 801 National Road West, Richmond, Indiana 47374-4095. The name of the registered agent of the Corporation is the chief financial officer of Earlham College unless otherwise provided for by the Board of Directors of Earlham Foundation, Inc., also referenced herein as “Board of Directors”.

**ARTICLE II**

**Board of Directors**

**Section 1.**     **Directors.** The affairs of the Corporation shall be managed, controlled, and conducted by, and under the supervision of, the Board of Directors, subject to the provisions of the Articles of Incorporation and these Bylaws.

- (a)     **Number.** The Board of Directors shall have nine (9) members.
- (b)     **Appointment.** The Board of Directors shall be appointed as follows:
  - (i)     **Automatic Director.** The chief financial officer of Earlham College shall serve as a Director *ex-officio*, with all rights and privileges accorded to other Directors, for the same term as her or his position as chief financial officer of Earlham College.
  - (ii)    **Appointed Directors.** The remaining eight (8) Directors (the “Appointed Directors”) shall be appointed by the Board of Directors as follows: two (2) Appointed Directors upon nomination of the Western Yearly Meeting of the

Religious Society of Friends, Plainfield, Indiana (the “Western Yearly Meeting”); and six (6) Appointed Directors upon nomination of the Earlham College Board of Trustees.

- (c) Term of Office. Each Appointed Director shall serve for two (2) years and until her or his successor is appointed and qualified; provided, however, that the Board of Directors may shorten the normal term of one (1) or more Appointed Directors to stagger the terms of Appointed Directors so that each year the Board shall appoint one Appointed Director upon nomination of the Western Yearly Meeting, and three (3) Appointed Directors upon nomination of Earlham College. The normal term of each Appointed Director shall expire on the first day of the next calendar year after the date for an annual meeting of the Board of Directors, as prescribed in these Bylaws. A person may not serve as an Appointed Director for more than five (5) consecutive terms, not including portions thereof; however, there is no limit on the number of nonconsecutive terms that a person may serve as an Appointed Director.

**Section 2. Quorum and Action.** A majority of Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of any business properly to come before the Board of Directors. The consent of the Directors present at a meeting at which a quorum is present (which for purposes of Indiana law shall mean at least a majority of the Directors) shall be the act of the Board of Directors, unless the act of a greater number is required by the Act, by the Articles of Incorporation, or by these Bylaws. Directors may attend by telephone or other electronic means.

**Section 3. Regularly Scheduled Meetings.**

- (a) Annual Meeting. The Board of Directors shall hold an annual meeting on a weekday during each calendar year. The annual meeting shall be held either (i) at Earlham College, Richmond, Wayne County, Indiana, or (ii) at such other place within or without the State of Indiana, and at such time, as is specified in a notice of such annual meeting, as described in Section 5 of this Article II, given not less than five (5) days prior to the meeting. Failure to hold the annual meeting in any given year(s) shall not work any forfeiture or a dissolution of the Corporation and shall not affect otherwise valid corporate acts.
- (b) Regular Meetings. The Board of Directors may hold regular meetings, as fixed by these Bylaws or by resolution of the Board of Directors, for the purpose of transacting such business as properly may come before the Corporation’s Board of Directors. Such regular meetings of the Board of Directors may be held with not less than five (5) days notice of the date, time, place, and general purpose of the meeting.

**Section 4. Special Meetings.** Notwithstanding the preceding Section 3 of this Article II, the Board of Directors may hold special meetings for any lawful purpose upon not less than five (5) days notice, as described in Section 5 of this Article II, upon call by the President of the Corporation. A special meeting shall be held at such date, time, and place within or without the State of Indiana as is specified in the call of the meeting. The purpose of any such meeting shall be specified.

**Section 5. Notice of Certain Meetings and Waiver.** Oral or written notice of the date, time, and place of each meeting (other than an annual meeting the place and time of which are scheduled herein, or a regular meeting) of the Board of Directors shall be communicated, delivered, or mailed by the Secretary of the corporation, or by the person or persons calling the meeting, to each member of the Board of Directors so that such notice is effective at least five (5) days before the date of the meeting. The notice shall describe the general purpose of the meeting but need not describe in detail specific purposes or agenda items. Oral notice shall be effective when communicated. Written notice shall be effective at the earliest of the following:

- (a) When received;
- (b) Five (5) days after the notice is mailed, as evidenced by the postmark or private carrier receipt, if mailed correctly addressed to the address listed in the most current records of the Corporation;
- (c) On the date shown on the return receipt, if sent by registered or certified United States mail or private carrier, return receipt requested, and the receipt is signed by or on behalf of the address; or
- (d) Thirty (30) days after the notice is deposited with another method of the United States Postal Service or private carrier other than first class, registered, or certified postage affixed, as evidenced by the postmark, if mailed correctly addressed to the address listed in the most current records of the Corporation.
- (e) By electronic delivery in the form of a time-and-date-stamped notice.

Notice may be waived in writing, signed by the Director entitled to the notice, and filed with the minutes or the corporate records. Attendance at or participation in any meeting of the Corporation's Board of Directors shall constitute a waiver of notice of such meeting unless the Director shall, at the beginning of the meeting or promptly upon the Director's arrival, object to holding the meeting and does not assent to action taken at the meeting. The Corporation or the other party sending such notice shall be entitled to rely upon the most current addresses and telephone numbers on the Corporation's books and records.

**Section 6. Conference Telephone Meetings.** A member of the Board of Directors may participate in any meeting of the Board of Directors by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation by these means constitutes presence in person at the meeting.

**Section 7. Removal, Resignation and Vacancies.** Any Appointed Director may be removed from office, with or without cause, upon the unanimous consent of the remaining Directors. A Director may resign at any time by giving written notice to the Board of Directors or the President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. Any vacancy in the position of an Appointed Director, caused by removal, resignation, death, or otherwise, shall be filled by the same process as the previous Director. For this newly appointed Director, the partial term shall not count towards the maximum of five (5) consecutive terms.

**Section 8. Consent Action by Directors.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all Directors or all members of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee. Action taken under this Article II, Section 8 is effective when the last Director signs the consent, unless the consent specifies a different, prior or subsequent effective date. Written consent of each Director may be provided in the form of an e-mail.

**Section 9. Compensation and Expenses.** The Directors of the Corporation shall serve on a volunteer basis and not be compensated for their service as a Director. This shall not preclude the chief financial officer of Earlham College from being compensated by the Corporation (or having the Corporation reimburse Earlham College for a reasonable proportion of the chief financial officer's compensation) for service beyond the individual's role as a Director. In addition, expenses incurred by Directors for the benefit of the Corporation may be reimbursed by the Corporation using the same requirements as employee expense reimbursements specified by the Business Expense Policy of Earlham College

### **ARTICLE III**

#### **Officers**

**Section 1. In General.** The officers of this Corporation shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board of Directors may otherwise elect. An officer may simultaneously hold more than one (1) office. Unless otherwise specified by the Board of Directors, the chief financial officer of Earlham College shall serve as Secretary and Treasurer of the Corporation *ex officio*, for the same term as her or his position as chief financial officer of Earlham College. Otherwise, each officer shall be selected by the Board of Directors at an annual meeting and shall serve for one (1) year, or such other period as prescribed by the Directors at the time of such election, and until the officer's successor is selected and qualified. All officers, except the Assistant Secretary and the Assistant Treasurer, must be members of the Board of Directors. Any officer may be removed by majority consent of the Board of Directors at any time, with or without cause. Any officer may resign at any time by giving written notice to the Board of Directors or President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. Any vacancy occurring in any office shall be filled by the Board of Directors, and the person selected to fill such vacancy shall serve until the expiration of the term vacated.

**Section 2. President.** The President shall preside at all meetings of the Board of Directors of the Corporation and shall be responsible for implementation of policies established by the Board of Directors. The President shall perform the duties incident to the office of the Chief Executive Officer of the Corporation and such other duties as the Board of Directors may prescribe.

**Section 3. Vice President.** The Vice President shall perform the duties usual to such position, assist the President in performing her or his duties, and fulfill the duties of the President if

the President is unable to do so due to health problems or conflicting obligations.

**Section 4.** **Secretary.** The Secretary shall be the custodian of all papers, books, and records of the Corporation other than books of account and financial records. The Secretary shall prepare and enter in the minute book the minutes of all meetings of the Board of Directors and the Executive Committee. The Secretary shall authenticate records of the Corporation as necessary. The Secretary shall perform the duties usual to such position and such other duties as the Board of Directors or President may prescribe.

**Section 5.** **Assistant Secretary.** The Assistant Secretary shall perform the duties usual to such position, assist the Secretary in performing her or his duties, and perform such other duties as Earlham's chief financial officer or the Corporation's President or Board of Directors may prescribe.

**Section 6.** **Treasurer.** The Treasurer shall prepare and maintain correct and complete records of account showing accurately the financial condition of the Corporation. All notes, securities, and other assets coming into the possession of the corporation shall be received, accounted for, and placed in safekeeping as the Treasurer may from time to time prescribe. The Treasurer shall furnish, whenever requested by the Board of Directors or the President, a statement of the financial condition of the Corporation and shall perform the duties usual to such position and such other duties as the Board of Directors or President may prescribe.

**Section 7.** **Assistant Treasurer.** The Assistant Treasurer shall perform the duties usual to such position and such other duties as Earlham's chief financial officer or the Corporation's President or Board of Directors may prescribe.

**Section 8.** **Other Offices.** Each other officer of the Corporation shall perform such duties as the Board of Directors or President may prescribe.

## **ARTICLE IV**

### **Committees**

**Section 1.** **Executive Committee.** The Executive Committee shall consist of the President, Vice President, Secretary, and Treasurer of the Corporation. The Executive Committee, to the extent provided in such resolution and consistent with Indiana law, shall have and exercise all of the authority of the Board of Directors in the management of the Corporation's affairs during intervals between the meetings of the Board of Directors. The Executive Committee shall be subject to the authority and supervision of the Board of Directors. The Secretary shall prepare and present the actions of all meetings of the Executive Committee to the Board of Directors for acknowledgement and inclusion in the minutes of the Corporation.

**Section 2.** **Officer Nominating Committee.** The Officer Nominating Committee shall consist of the current officers and the previous Presidents who still remain as Directors. The Officer Nominating Committee shall prepare and/or verify the Directors to be appointed and prepare a slate of officers for presentation at the Annual Meeting.

**Section 3. Other Committees.** The Board of Directors may establish other committees, in addition to the Executive Committee, to accomplish the goals and perform the programs of the Corporation. Such committees shall have such responsibilities and powers as the Board of Directors shall specify. Members of such other committees may, but need not, be members of the Board of Directors. A committee member appointed by the Board of Directors may be removed by consent of the Board of Directors with or without cause.

## **ARTICLE V**

### **Ethical Standards and Conflict of Interest**

**Section 1. Standards of Conduct of Directors.** All Directors shall abide by standards of ethical conduct while performing their duties as Directors of the Corporation, as more particularly prescribed by Indiana Code 23-17-13-1 *et seq.*

**Section 2. Purpose of Conflicts of Interest Policy.** In addition to the standards of ethical conduct for Directors under Indiana law, all Directors shall also abide by the ethical policies and procedures as may be established by the Corporation, including any conflict of interest policy. The purpose of the conflicts of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of the Corporation. Each Director has a duty to disclose the existence and nature of her or his financial interests that may present a conflict of interest under the Corporation's policy. Further each Director shall sign an annual statement affirming the Director's compliance with the policy and confirm the Director's understanding of the charitable purposes served by the Corporation.

## **ARTICLE VI**

### **Indemnification**

**Section 1. Indemnification by the Corporation.** To the extent not inconsistent with applicable law, every person (and the heirs and personal representatives of such person) who is or was a Director or officer of the Corporation shall be indemnified by the Corporation against all liability and reasonable expense that may be incurred by her or him in connection with or resulting from any claim, action, suit, or proceeding (a) if such person is wholly successful with respect thereof or, (b) if not wholly successful, then if such person is determined as provided in Section 3 of this Article V to have acted in good faith, in what he or she reasonably believed to be the best interests of the Corporation (or, in any case not involving the person's official capacity with the Corporation, in what he or she reasonably believed to be not opposed to the best interests of the Corporation) and, in addition, with respect to any criminal action or proceeding, is determined to have had reasonable cause to believe that the conduct was lawful (or no reasonable cause to believe that the conduct was unlawful). The termination of any claim, action, suit, or proceeding, by judgment, settlement (whether with or without court approval), or conviction or upon a plea of guilty or of *nolo contendere*, or its equivalent, shall not create a presumption that a person did not meet the standards of conduct set forth in this Article V.

**Section 2. Definitions.**

- (a) As used in this Article V, the terms “claim, action, suit, or proceeding” shall include any threatened, pending, or completed claim, action, suit, or proceeding and all appeals thereof (whether brought by or in the right of this Corporation, any other corporation or otherwise), civil, criminal, administrative, or investigative, whether formal or informal, in which a person (or her or his heirs or personal representatives) may become involved, as a party or otherwise:
  - (i) By reason of her or his being or having been a Director or officer of the Corporation or of any corporation where he or she served as such at the request of the Corporation, or
  - (ii) By reason of her or his acting or having acted in any capacity in a corporation, partnership, joint venture, association, trust or other organization or entity where he or she served as such at the request of the Corporation, or
  - (iii) By reason of any action taken or not taken by her or him in any such capacity, whether or not he or she continues in such capacity at the time such liability or expense shall have been incurred.
- (b) As used in this Article V, the terms “liability” and “expense” shall include, but shall not be limited to, counsel fees and disbursements and amounts of judgments, fines, or penalties against, and amounts paid in settlement by or on behalf of, a person.
- (c) As used in this Article V, the term “wholly successful” shall mean (i) termination of any action, suit, or proceeding against the person in question without any finding of liability or guilt against her or him, (ii) approval by a court, with knowledge of the indemnity herein provided, of a settlement of any action, suit, or proceeding, or (iii) the expiration of a reasonable period of time after the making of any claim or threat of any action, suit or proceeding without the institution of the same, without any payment or promise made to induce a settlement.

**Section 3. Entitlement to Indemnification.** Every person claiming indemnification hereunder (other than one who has been wholly successful with respect to any claim, action, suit, or proceeding) shall be entitled to indemnification (a) if special independent legal counsel, which may be regular counsel of the Corporation or other disinterested person or persons, in either case selected by the Board of Directors, whether or not a disinterested quorum exists (such counsel or person or persons being hereinafter called the “referee”), shall deliver to the Corporation a written finding that such person has met the standards of conduct set forth in the preceding Section 1 of this Article V and (b) if the Board of Directors, acting upon such written finding, so determines. The person claiming indemnification shall, if requested, appear before the referee and answer questions which the referee deems relevant and shall be given ample opportunity to present to the referee evidence upon which he or she relies for indemnification. The Corporation shall, at the request of the referee, make available facts, opinions or other evidence in any way relevant to the referee’s findings that is within the possession or control of the Corporation.

**Section 4. Relationship to Other Rights.** The right of indemnification provided in the Article V shall be in addition to any rights to which any person may otherwise be entitled.

**Section 5. Extent of Indemnification.** Irrespective of the provisions of this Article V, the Board of Directors may, at any time and from time to time, approve indemnification of Directors, officers, or other persons to the fullest extent permitted by applicable law, or, if not permitted, then to any extent not prohibited by such law, whether on account of past or future transactions.

**Section 6. Advancement of Expenses.** Expenses incurred with respect to any claim, action, suit, or proceeding may be advanced by the Corporation (by majority consent of the Board of Directors, whether or not a disinterested quorum exists) prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amount unless he or she is entitled to indemnification.

**Section 7. Purchase of Insurance.** The Board of Directors is authorized and empowered to purchase insurance covering the Corporation's liabilities and obligations under this Article V and insurance protecting the Corporation's Directors or officers, or other persons.

## **ARTICLE VII**

### **Contracts, Checks, Loans, Deposits, and Gifts**

**Section 1. Contracts.** The Board of Directors may authorize one (1) or more officers, agents, or employees of the Corporation to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power to bind the Corporation or to render it liable for any purpose or amount.

**Section 2. Checks.** All checks, drafts, or other orders for payment of money by the Corporation shall be signed by such person or persons as the Board of Directors may from time to time designate by resolution. Such designation may be general or confined to specific instances.

**Section 3. Loans.** Unless authorized by the Board of Directors, no loan shall be made or contracted for on behalf of the Corporation and no evidence of indebtedness shall be issued in its name. Such authorization may be general or confined to specific instances.

**Section 4. Deposits.** All funds of the Corporation shall be deposited to its credit in such bank, banks or other depositories as the Board of Directors may designate. Such designation may be general or confined to specific instances.

**Section 5. Gifts.** The Board of Directors may accept on behalf of the Corporation any gift, bequest, devise or other contribution for the purposes of the Corporation on such terms and conditions as the Board of Directors shall determine.



## **ARTICLE VIII**

### **Seal**

The Board of Directors may provide a seal as defined in the Articles of Incorporation. The impression of such seal, or the failure to do so, shall not affect the validity or enforceability of any document or instrument, however.

## **ARTICLE IX**

### **Amendments**

The power to make, alter, amend, or repeal the Bylaws is vested in the Board of Directors of the Corporation. An amendment may be made at any regular meeting of the Board of Directors upon the consent of the Directors (which for purposes of Indiana law shall mean at least a majority of the Directors); provided, however, that such power shall not authorize any amendment, alteration, change or repeal which would have the effect of disqualifying the Corporation as a tax-exempt organization under Section 501(c)(3) of the Code or would have the effect of disqualifying contributions to the Corporation for deduction under Section 170(c)(2), Section 2055(a)(2) or Section 2522 of the Code.