

BY-LAWS
of the
ROCHESTER PHILHARMONIC ORCHESTRA, INC.

Approved by the RPO Board of Directors
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BY-LAWS

of the

ROCHESTER PHILHARMONIC ORCHESTRA, INC.

ARTICLE I

MEMBERS

Section 1. QUALIFICATIONS FOR MEMBERSHIP

(a) Any individual, corporation, foundation, or other entity, who or which shall pay to the Corporation at any time during the membership year and in connection with a fund-raising campaign, at least the amount fixed by the Board as the sum qualifying for membership in that year, shall be a member of the Corporation for the balance of such membership year following payment, and also for the following membership year provided that that year's required amount is paid during that year. The amount shall be fixed before the beginning of the membership year, or if the Board chooses not to make a change it shall be the amount last fixed for a prior year.

(b) Two individuals living together at the same address as a family, making a contribution in the amount at or above the amount required for individual membership, shall be deemed to have a dual membership with one vote. They shall share the rights and benefits of membership except that (i) notices and other communications can be sent to them jointly, and (ii) rights to take member actions (e.g., voting, waiving, granting proxies, calling for special meetings, petitioning for by-law amendment, inclusion in a quorum) may be exercised only as a single member unit by the action of whichever is first to act.

(c) The membership year, unless otherwise determined in advance of the start of the membership year by the Board, shall be the calendar year. If, as provided in (a) above, a membership has carried over into the year following the year of its qualification contribution, and there is no renewing contribution in that second year, the membership shall cease with the end of that second year, and the right to vote or to other benefits of that membership shall cease, even if the record date for determining voters for the upcoming Annual Meeting has passed.

(d) The Corporation shall maintain a Members page in its website to provide public information on how to become a member, voting and other rights, current determinations of the

membership amount and membership year, what form of gift may or may not qualify as a membership payment, and other rules and procedures regarding membership as may be approved by the Board.

Section 2. EVIDENCE OF MEMBERSHIP

Membership shall be evidenced in the corporate office by listing, with respect to the membership year, the name, address, and date of qualification of each member. Membership is not transferable.

Section 3. OWNERSHIP OF CORPORATE PROPERTY

The Corporation shall not be operated for profit and its entire properties, assets and facilities shall be devoted to the purpose for which it is organized, as set forth in its Certificate of Incorporation, as the same may from time to time be amended. No member shall have any right to or any share or interest in any of the property or assets of the Corporation, and no member shall be liable for any of the debts, liabilities or obligations of the Corporation beyond the amount of any unpaid legal obligation owed to the Corporation by the member.

Section 4. WITHDRAWAL OR SUSPENSION

Any member may, at any time, voluntarily withdraw from membership. The Board may, at any time, suspend or expel any member for conduct detrimental to the Orchestra or the Corporation, or for other good cause, provided the member is afforded an opportunity to appear before the Board at or prior to the meeting at which such suspension or expulsion will be considered, but no such suspension or expulsion shall relieve such member from liability to the Corporation for any unpaid legal obligation owed to the Corporation by the member to the Corporation.

ARTICLE II
MEETINGS OF MEMBERS

Section 1. ANNUAL MEETINGS

A meeting of members entitled to vote shall be held for the election of Directors, presentation of the Annual Report of Directors required by law, and the transaction of other business during the month of January or February after the end of the fiscal year, as fixed by the Board Chair or President/CEO.

Section 2. SPECIAL MEETINGS

Special meetings of the members may be called at any time by the Board Chair or the Board. Special meetings of the members may also be called by one hundred (100) members or by ten percent (10%) of the total number of members entitled to vote at such a meeting, whichever number is the lesser, which call shall be accomplished through the Secretary of the Corporation and shall comply with applicable provisions of law.

Section 3. PLACE OF MEETINGS

Meetings of members shall be held at such place as may be fixed by the Chair, the Board or the President/CEO.

Section 4. NOTICE OF MEETINGS

(a) Notice shall be given of each meeting of members, shall be in writing, and shall state the place, date and hour of the meeting. Notice of a special meeting shall state the purpose or purposes for which it is being called, and shall also identify the person or persons calling the

meeting and state that such notice is being issued by or at the direction of such person or persons calling the meeting.

(b) A copy of the notice of the Annual Meeting shall be given by first class mail and of any other meeting shall be given by first class mail or by email, in all cases not less than ten (10) nor more than fifty (50) days before the date of the meeting, to each member entitled to vote at such meeting. Such notice shall take effect and comply with rules applicable to the delivery method used, as set out in Article IX of these By-Laws.

(c) Notice of meeting need not be given to any member who in any manner submits a signed waiver of notice, in person or by proxy, whether before or after the meeting, and whether submitted to the corporate office, the Secretary, or to any persons designated by the meeting chair as a receiver thereof. The attendance of any member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by the member.

Section 5. QUALIFICATION OF VOTERS

(a) Every member of record of the Corporation, whether an individual, foundation, corporation, or other entity, shall be entitled to one vote at every meeting of the members during the period of membership except as provided in (b) of this section.

(b) The Board may fix, in advance, a date as the record date for the purpose of determining the members entitled to vote at any meeting of members or at any adjournment thereof. The record date shall be not more than fifty (50) nor less than ten (10) days before the date of the meeting. If not fixed by the Board, the record date for the Annual Meeting shall be the last day of the membership year, or 50 days before the date set for the Annual Meeting, whichever is later. If an Annual Meeting date scheduled in February requires a record date in January, those eligible to vote shall include those whose qualifying contribution was made at any time between the beginning of the prior membership year and the record date.

Section 6. QUORUM AND ADJOURNED MEETINGS

(a) At any annual or special meeting, either a sufficient number of members entitled to cast ten percent (10%) of the total number of votes entitled to be cast thereat, or one hundred (100) members, whichever number shall be lesser, present in person or by proxy, shall constitute a quorum for the transaction of any business. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any member.

(b) The members present, at any meeting of members, whether or not a quorum is present, may, at any time during the meeting, adjourn the meeting to another time and place, and it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned be announced at the meeting at which the adjournment is taken. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting. If after the adjournment, however, the Board fixes a new record date for determining the members entitled to vote at the adjourned meeting, a notice of the adjourned meeting shall be given to each member then entitled to notice under Section 4 of this Article II of the By-Laws.

Section 7. ORGANIZATION

At every meeting of members the Chair or, in the Chair's absence, a Vice Chair or, in the absence of such officers, the President/CEO or, in the absence of all such officers, a person selected by the meeting, shall act as chair of the meeting. The Secretary or, in the Secretary's absence, a person selected by the meeting shall act as secretary of the meeting.

Section 8. VOTING

(a) Whenever any corporate action, other than the election of Directors, is to be taken by vote of the members at a meeting, it shall, except as otherwise required by law or by the Certificate of Incorporation or these By-Laws, be authorized by a majority of the votes cast at such meeting.

(b) Each Director shall be elected by a plurality of the votes cast at a meeting of members for all the candidates except as otherwise required by law, and in case of a tie the choice shall be decided by lot.

(c) The election of Directors shall be by written ballots, which shall accompany the notice of the annual meeting given to members pursuant to Section 4 of this Article II. The entire list of those nominated to serve as Directors, consisting of those nominated by the Governance Committee (section 3(a) of Article III) and those nominated by members (section 3(b) of Article III), shall be listed in alphabetical order on a written ballot. The ballot shall clearly indicate: (1) that candidates have been listed in alphabetical order; (2) the number of candidates to be elected, which number shall have been fixed by the Governance Committee; (3) that those candidates receiving the highest number of votes will be elected regardless of their listing or position on the ballot; and (4) which candidates are nominees of the Governance Committee, and which are petition candidates nominated pursuant to Section 3(b) of Article III of these By-laws. An information sheet containing a brief summary of biographical data on all director candidates shall be distributed with each ballot. In the event that one or more directors are being nominated to serve a term of less than three (3) years, the Governance Committee shall designate which of the candidates is running for a term of less than three (3) years. Ballots shall accompany the notice of the annual meeting given to members pursuant to Section 4 of this Article II. Each member shall mark the ballot to indicate a choice of candidate or candidates, and shall return the ballot by mail or in person to the inspectors of election, such delivery or postmark to be not later than 5 p.m., Rochester, New York time, two (2) business days before the Annual Meeting. A member who has not returned the ballot by that time may deliver the ballot to the Secretary or to the Inspectors at the Annual Meeting prior to the opening thereof.

Section 9. PROXIES

(a) Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting, or to otherwise exercise a member right, may authorize another person or persons to act for the member by proxy, except that no proxy shall be permitted or valid with respect to voting in any election of directors. Members absent from a meeting at which any

election of directors is held may exercise their right to vote only by following the ballot procedure set forth in Article II, Section 8c.

(b) Every proxy must be dated and signed by the member and delivered to the Secretary prior to the opening of a meeting at which it will be intended for use, or prior to or along with taking an action intended to be authorized by it. Delivery may be made in person or by methods mentioned in Article IX and subject to those provisions, or to the corporate office addressed to attention of the Secretary. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the Secretary.

Section 10. INSPECTORS

(a) The Board, in advance of any members' meeting, may appoint one or more persons to act as Inspectors at the meeting or any adjournment thereof. If Inspectors are not so appointed, the person presiding at a meeting of members may, and on the request of any member entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear to act, the vacancy may be filled by appointment made by the Board in advance of the meeting, or at the meeting by the person presiding thereat. Each Inspector, upon accepting appointment, before entering upon the discharge of the acquired duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality.

(b) The Inspectors shall, as needed, determine the number of members entitled to vote at the meeting; the existence of a quorum; and the validity and effect of proxies; and shall receive votes, ballots or consents; hear and determine all challenges and questions arising in connection with the right to vote; count and tabulate all votes, ballots or consents; determine the result; and do such acts as are proper to conduct the election or vote with fairness to all members. On request

of the person presiding at the meeting or any member entitled to vote thereat, the Inspector shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified.

Section 11. LIST OF MEMBERS AT MEETING

A list of members entitled to vote, certified by the Secretary, shall be available at any meeting of members. If the right to vote at any meeting is challenged, the Inspectors, or person presiding thereat shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting pursuant to Article II, Section 5.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. POWER OF BOARD AND QUALIFICATION OF DIRECTORS

The Corporation shall be managed by its Board (herein, "the Board"). In addition, the Board shall have all powers and duties enumerated in these By-laws and set forth in applicable laws. Each Director shall be at least nineteen (19) years of age and be a member of the Corporation.

Section 2. CLASSIFICATION OF DIRECTORS; TERMS

The number of Directors, elected and *ex officio*, shall not be less than fifteen (15), nor greater than forty (40). When the term "Entire Board" is used in these By-Laws it shall mean, in the applicable alternative, (a) the total number of Directors entitled to vote which the corporation would have if there were no vacancies, or (b) if the By-Laws provide for a fixed number of Directors, or permit the board to fix the number by resolution and it has done so, then the term shall mean the number so fixed, or (c) if the By-Laws provide that the board may consist of a range between a minimum and maximum number of Directors and the number has not been fixed, then the term shall mean the number of Directors within such range that were elected as of the most

recently held election of Directors, as well as the Directors serving *ex officio* and any Directors whose terms have not yet expired. Each of the following persons, by virtue of holding one of the following offices and as long as such office is held, shall serve as an *ex officio* voting member of the Board: President/CEO of the Corporation; Immediate Past Chair of the Board; Dean of the Eastman School of Music; two representatives to the Corporation elected from and by Orchestra members of the Rochester Philharmonic Orchestra; and Chair of the Honorary Board. All other Directors shall be elected by members of the Corporation. The term of office of an elected Director shall be three (3) years. Approximately one-third (1/3) of the elected Directors, with the exact number each year at the discretion of the Governance Committee, shall be elected each year to serve a full term or an unexpired term, or a one-year term of a Board Chair. The term of each elected Director shall extend through the Annual Meeting in the year in which the term expires. No elected Director who will have served more than eight (8) continuous service years where only service of more than eight (8) months counts as a full year) shall be nominated for election; provided, however, that nothing herein shall prevent such election of a former Director whose last prior elected term expired at least one (1) full year prior to the new election of such Director; and further provided that a person who holds the office of Board Chair may be nominated as a director for an additional term of one year, renewable one time for a second one year term.

Section 3. NOMINATION OF DIRECTORS

(a) Nominating by Governance Committee. The Governance Committee shall prepare a list of the names of director candidates in time to be included on the ballot to be distributed to the members, and the list shall also be delivered earlier to the Directors for their information. In the preliminaries of the process, names coming up for final consideration shall be circulated privately among the Directors with a request for their personal inputs.

(b) Other Nominations. Other nominations of director candidates must be delivered in writing to the Secretary at the offices of the Corporation by November 30 preceding the Annual Meeting, and must be signed by not less than twenty-five (25) members of the Corporation who are, as of the date of delivery to the Secretary, qualified to vote in the election of Directors. The Secretary shall notify the Board and the Governance Committee of these nominations, and also

provide informational notice to the membership in such manner as the Secretary shall determine. The proponents of the member nominations should assist the Secretary in securing biographic information on the nominees for inclusion in ballot communications. The Chair of the Governance Committee shall assure that a conference is held with each such nominee to explain the Board's expectations of members and to secure conflicts disclosure. Nominations from the floor at any meeting for elections shall not be in order.

Section 4. ORGANIZATION

At each meeting of the Board, the Chair of the Board or, if absent, a Vice Chair, shall preside, or in the absence of any of such officers, a chair pro tem chosen by a majority of the Directors present shall preside. The Secretary shall act as Secretary of the meeting or, in the absence of the Secretary, the Chair shall designate a secretary pro tem.

Section 5. ATTENDANCE AT MEETINGS

It shall be the duty of each Director to attend and remain present at regular and special meetings of the Board. It shall be the duty of each Director to notify the Chair, in advance, of any expected absence from any such meeting

Section 6. RESIGNATION; REMOVAL FOR CAUSE

(a) Any Director of the Corporation may resign with or without a stated reason at any time by giving written notice to the Chair or to the Secretary by any means authorized by Article IX. Such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery. Board acceptance is not necessary for effectiveness.

(b) Any Director may be removed from the Board for cause by a vote of the Directors. The absence of a Director from three (3) or more regular meetings in any twelve-month period without giving the notification of absence required by Section 5 of this Article may be deemed cause for removal.

Section 7. VACANCIES

Vacancies occurring in the Board for any reason shall be filled by vote of a majority of Directors then in office, regardless of their number. The Governance Committee shall provide the Board, as soon as practicable, with the name of a candidate for each such vacancy. A Director elected to fill a vacancy shall hold office until the next Annual Meeting and until a successor is elected and qualified.

Section 8. ACTION BY THE BOARD

(a) Any corporate action to be taken by the Board means action at a meeting of the Board. Except as otherwise provided by law or these By-Laws, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at that time, shall be the act of the Board. Each Director shall have one vote.

(b) Any one or more members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. That said, however, in advance of any meeting the Chair may direct that such attendance shall not be permitted, in which event a five (5) days' notice of a regular meeting announcing that fact shall be issued in the manner of a rescheduled meeting under section 10 below, and in the case of a special meeting it shall be announced in the notice.

(c) Any action required or permitted to be taken by the Board may be taken without a meeting if all Directors consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent thereto by the members of the Board shall be filed with the minutes of its proceedings. Consents may be provided in a writing signed by the Director delivered either as an original or by electronic means that comply with Article IX.

(d) Directors who are present at a meeting but not present at the time of a vote due to a conflict of interest or related party transaction shall be deemed to be present at the time of the vote for the purposes of this section.

(e) Voting by proxy or leaving one's vote with another, whether or not in writing, is never permitted.

Section 9. PLACE OF MEETING

The Board may hold its meeting at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board may from time to time by resolution determine.

Section 10. REGULAR MEETINGS

Regular meetings of the Board may be held at such time as may be fixed from time to time by resolution of the Board, provided that there be no fewer than four (4) regular meetings of the Board per year. Reminders and agenda materials will normally be given, but formal notice is not required for Board-scheduled meetings. The time, date or place of a scheduled meeting may be changed by direction of the Chair, in which case written notice thereof shall be given to each Director, not less than five (5) days before the earlier of the scheduled or re-scheduled date, by first class mail, fax or email and compliant with Article IX.

Section 11. SPECIAL MEETINGS

Special meetings of the Board shall be held whenever called by the Chair, by the President/CEO, or by any three (3) Directors. Notice of the purpose, time and place of the meeting compliant with Article IX shall be given to each Director (i) orally in person, in writing by in-hand delivery, or by actual telephone conversation (not a left message), or (ii) by fax or email, or (iii) by first class mail or voice mail. If notice is given under (i) it shall be given not less than one (1) day before the meeting; if under (ii) not less than three(3) days before; and if under (iii) not less than five (5) days before.

Section 12. WAIVERS OF NOTICE

Notice of a meeting need not be given to any Director who submits to the Secretary a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Submission may be in person, by first class mail, or by fax or email, compliant with Article IX.

Section 13. QUORUM

(a) A majority of the Entire Board shall constitute a quorum for the transaction of business.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place, provided that notice thereof shall be given in the manner required by Section 11 of this Article for a Special Meeting, to those Directors who were not present when the adjournment was set.

Section 14. COMPENSATION

No Directors other than the President/CEO shall receive compensation for their services, but may be reimbursed with the approval of the Executive Committee for the expenses reasonably incurred by them in the performance of their duties.

**ARTICLE IV
OFFICERS**

Section 1. OFFICERS

The officers of the Corporation shall include a Chair, the Immediate Past Chair, a President/CEO, a Secretary, and a Treasurer, and may include one or more Vice Chairs and may include a Chair-Elect. Two or more offices may be held by the same person except for the offices of Chair and Secretary.

Section 2. ELECTION OF OFFICERS, TERMS AND QUALIFICATIONS

The Chair, the Secretary, the Treasurer, and any Vice-Chairs shall be elected by and from the Board at the last scheduled meeting of Directors in each fiscal year to take effect for the next fiscal year. Unless a shorter term is provided in the resolution electing such officers, the term of office of each officer shall extend to the end of the next fiscal year and until his or her successor

is elected and qualified. A Chair-Elect may be elected, when determined appropriate by the Board, for a term extending to the end of the fiscal year. The President/CEO shall be appointed by the Board and shall serve at the discretion of the Board. No employee of the corporation may serve as Board Chair.

Section 3. ADDITIONAL OFFICERS

Additional officers may be elected by the Board from among its members, for annual terms or other period and having such authority and performing such duties as the Board may from time to time determine.

Section 4. REMOVAL OF OFFICERS

Any officer may be removed by the Board with or without cause at any time by a vote of two-thirds (2/3) of the Entire Board provided said officer is given an opportunity to appear before the Board at or prior to the meeting at which the removal action is taken.

Section 5. RESIGNATION

Any officer may resign at any time by giving written notice to the Chair or to the Secretary, who shall bring it to the attention of the Board. Any such resignation shall take effect at the time specified therein or, if no time be specified, then upon delivery. Board acceptance is not necessary for effectiveness.

Section 6. VACANCIES

A vacancy in any office shall be filled by the Board, unless the office is intended to be left vacant. The Governance Committee shall normally provide the Board, as soon as practicable, with the name of a candidate to fill such vacancy, although the Board may act on its own initiative in its discretion.

Section 7. CHAIR OF THE BOARD

The Chair of the Board shall lead the Board in providing governance and oversight of the Corporation and the advancement of its mission. The Chair shall act as ambassador for the Corporation, serve as its primary spokesperson with media and patrons, and be the primary liaison between the Board and the President/CEO. The Chair shall set agendas for Board meetings and oversee planning for the Board's annual calendar. The Chair shall preside at all meetings of the Board and the Executive Committee. The Chair shall appoint the chairs of the Committees of the Board from among the committee members, except for the Audit Committee and where otherwise provided in these By-Laws. The Chair shall appoint the chairs of the Committees of the Corporation, subject to approval of the Board, and shall consult and collaborate with the chairs of the Committees of the Corporation on appointment of their members. The Chair shall be an *ex officio* voting member of all committees except the Governance and Audit Committees, and he or she shall have the special relationship to a committee's quorum described hereafter in Section 8 of Article V. The Chair shall annually conduct a performance evaluation of the President/CEO, including the collection of feedback from the members of the Board. The Chair shall review the results with the President/CEO and shall present a report, including a summary of the feedback, to the Executive Committee in executive session. The Chair shall have such powers and perform such other duties as are properly required by the Board.

Section 8. VICE CHAIRS AND THE CHAIR-ELECT

Each Vice Chair, and the Chair-Elect, shall have such powers and shall perform such other duties as may be assigned by the Board or the Chair. In the absence of the Chair from a meeting of the Board or Executive Committee, the Vice-Chair shall preside, and if there be more than one present the one theretofore designated by the absent Chair shall preside, or if no designation has been made then the one selected by a majority of the members present.

Section 9. PRESIDENT/CEO

The President/Chief Executive Officer shall be employed by the Corporation as the Chief Executive Officer of the Corporation, and it shall be the President/CEO's duty to manage the

affairs of the Corporation subject only to the supervision of the Chair and the Board. The President/CEO shall also perform such other duties as may be assigned from time to time by the Chair or by the Board. The President/CEO shall be an *ex officio* voting member of all committees except the Governance and Audit Committees, and he or she shall have the special relationship to a committee's quorum described hereafter in Section 8 of Article V. The term of office and other terms of employment of the President/CEO shall be subject to the approval of the Board upon recommendation of the Chair.

Section 10. TREASURER

The Treasurer shall from time to time make reports to the Board and Executive Committee on the current and projected financial condition of the Corporation, make an annual report on financial condition to the Annual Meeting in the form required by law, shall cause regular books of account to be kept by the financial staff of the Corporation and shall assist in the preparation of an annual budget to be presented to the Board for approval. The Treasurer shall have full and current access to the financial books and records of the Corporation. The Treasurer shall serve as Chair of the Finance Committee and shall work with the Finance Committee, the President/CEO and the Corporation's financial officer to develop for Board consideration short and long range financial strategies in the interests of the Corporation. The Treasurer shall perform such other duties as usually pertain to the office or as are required by the Chair or by the Board.

Section 11. SECRETARY

It shall be the duty of the Secretary to act as Secretary at all meetings of the Board and of the Executive Committee, and to cause the minutes of all such meetings to be kept and placed in the corporate records; to also collect and place in the corporate records the minutes or other documentation of the actions of any other committee that had authority to act on behalf of the Board; to see that all notices required to be given by the Corporation are duly given and served; to be custodian of the seal of the Corporation and to affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall perform such other duties as usually pertain to the office of Secretary or as are required by the Chair or by the Board.

Section 12. IMMEDIATE PAST CHAIR

The Chair shall, upon completion of his or her term as Chair, become Immediate Past Chair for the duration of the elected term or terms of his or her immediate successor as Chair. The Immediate Past Chair shall have such duties as are required by the Chair and/or Board.

Section 13. COMPENSATION OF OFFICERS

Determination of the compensation of officers is a Related Party Transaction under New York law requiring special processing under the Corporation's Conflict of Interest Policy. In the case of the President/CEO the matter shall be determined by the Board itself, requiring only a normal vote, and for all other compensated officers by the Executive Committee.

ARTICLE V

COMMITTEES

Section 1. COMMITTEES OF THE BOARD

These by-laws, or the Board by resolution or charter, may create Committees of the Board, each consisting of three or more directors. The Board shall appoint the members of each such Committee of the Board, except that in the case of the Executive Committee the appointment shall be made by a majority of the Entire board, provided that if the Entire Board has thirty (30) members or more, the appointment shall be made by at least three-quarters of the Directors present at the time of the vote, if a quorum is present at that time. The by-laws may provide that Directors who are the holders of certain positions in the corporation shall be ex-officio members of specific committees. Each committee of the Board shall have the authority of the board to the extent provided in a by-law, Board resolution or charter, except that no committee of any kind shall have authority as to the following matters:

- (a) The submission to members of any action requiring members' approval under the law.
- (b) The filling of vacancies in the Board of directors or in any committee.
- (c) The fixing of compensation of the Directors for serving on the board or on any committee.
- (d) The amendment or repeal of the by-laws or the adoption of new by-laws.
- (e) The taking of any action which by law requires the affirmative vote of a majority or other specified portion of the Entire Board.
- (f) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.
- (g) The election or removal of officers and Directors.
- (h) The approval of a merger or plan of dissolution.
- (i) The adoption of a resolution recommending to the members action on the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation.
- (j) The approval of amendments to the Certificate of Incorporation.

Section 2. EXECUTIVE COMMITTEE

There shall be an Executive Committee as a Committee of the Board, the members of which shall consist of the Officers of the Corporation serving from time to time under Article IV, the Chairs of the Governance, Audit, Finance, Education and Outreach, Development, Patron Services and Marketing, and Volunteer Engagement Committees; and one other member of the Board which the Chair may nominate in collaboration with the President/CEO and who shall be appointed in the manner prescribed in Section (1) of this Article. The Chair, or if absent the proper Vice-Chair, or if none is present then another member of the Executive Committee designated by the Chair, shall chair the Executive Committee. When the Board is not in session, the Executive Committee shall have charge of the activities of the Corporation and direct supervision over all its affairs and operations and shall have all the power and authority of the Board except as is otherwise provided in Section (1). Any reference in these By-laws to the Board shall include the Executive

Committee, unless it is expressly otherwise provided, or unless the context clearly indicates the contrary. Any action taken by the Executive Committee shall be reported to the Board at its next meeting, and the minutes of the Executive Committee shall be furnished to the Board as soon as practicable.

Section 3. AUDIT COMMITTEE

There shall be an Audit Committee as a Committee of the Board, consisting of three (3) or more Directors who satisfy the statutory requirements for independence, appointed in the manner prescribed in Section 1 of this Article, generally at the first meeting of the Board after the Annual Meeting but in any case timed for service in connection with the audit of the financial statements of the Corporation for the pending fiscal year, with their service continuing through the reporting of the financial statements at the Annual Meeting of members and until their successors are elected. The Chair of the Audit Committee shall be designated by the Board. At least one member of the Audit Committee shall have significant experience with financial reporting and accounting or significant previous service on audit committees. The Committee shall perform the functions required by the Audit Oversight provisions of New York law and shall keep minutes and report on its activities to the Board.

Section 4. COMMITTEES OF THE CORPORATION

The following shall be Committees of the Corporation: Governance, Finance, Education and Outreach, Development, Patron Services and Marketing, and Volunteer Engagement. Other such committees may be created by the Board by amendment of this By-Law or by adoption of a charter. The charter of each such committee shall be determined by the Board. The chair of each committee shall be appointed annually from among the members of the Board by the Board Chair subject to approval of the Board, except the chair of the Finance Committee who shall be the Treasurer of the Corporation. Committee members may but need not be Board members, and, except for the Governance Committee, members of these committees other than the chair shall be appointed by the chair of the committee in consultation and collaboration with the Board Chair.

Section 5. GOVERNANCE COMMITTEE

The Governance Committee shall consist of no fewer than five (5) members of the Corporation appointed each year by the Board Chair, acting with the advice and approval of the Board. At least three (3) members of the Governance Committee shall be members of the Board, one member shall be a member of the Orchestra designated by the Orchestra, and one member shall be a member of the Honorary Board. The chair of such committee shall be a member of the Board. The Committee shall present a slate of Board nominees to the Annual Meeting. The Committee shall also prepare a slate of Corporation and Honorary Board officer candidates to be voted on by the Board, annually, at their last scheduled meeting of each fiscal year to serve for the following fiscal year. When considered appropriate to facilitate a transition in leadership, the Committee may propose a Chair-Elect to be voted on by the Board at any meeting within the fiscal year. The Committee shall from time to time present the Board with nominees for filling Board or officer vacancies or for election to the Honorary Board. The Governance Committee shall also be responsible for conducting an annual review of Board performance, policies and these By-laws.

Section 6. POWERS OF COMMITTEES OF THE CORPORATION

Each Committee of the Corporation shall have only such authority as is provided by the Board in its designating By-Law or charter, and in no case shall have any authority to bind the Board nor any authority denied it by Section 1 of this Article V.

Section 7. MEETINGS AND NOTICE

Meetings of committees shall be held at such time and place as shall be fixed by the Chair of the Board, the President/CEO, the chair of the committee or by vote of a majority of all members of the committee. Reminders and agenda materials will normally be given, but formal notice is not required for meetings scheduled as above and published or otherwise made known to the members. The time, date or place of a scheduled meeting may be changed by a person who could have called the meeting. Notice of a change in a scheduled committee meeting, or notice of a new committee meeting, shall comply with Article IX and shall be timely provided consistent with a time period and method stated in Article III, Section 11.

Section 8. QUORUM AND MANNER OF ACTING

Unless otherwise provided by a committee charter or resolution of the Board, a majority of all of the voting members of a committee shall constitute a quorum for the transaction of business, provided, however, that in consideration of the possibility that the Chair or the President/CEO shall not in fact have time to attend all meetings of all committees, each of those persons will be counted as a voting member of a committee for determining its quorum when present, and will be disregarded for the purpose when absent. Any action to be taken by a committee means action at a meeting, and the provisions of Section 8 of Article III shall apply equally to a committee. Except as otherwise provided herein, the vote of a majority of the committee members present at the time of the vote, if a quorum is present at that time, shall be the act of the committee, except, however, that where the committee consists of five (5) or fewer voting members the vote of a majority of all of the voting members of the committee shall be the act of the committee. The procedures and manner of acting of the Executive Committee and other committees of the Board shall be subject at all times to the directions and oversight of the Board.

ARTICLE VI.

HONORARY BOARD

Section 1. PURPOSE

There shall be an Honorary Board, the purpose of which is to recognize, and to retain the active continuing involvement of, persons who have established a record of unusual or outstanding service or contribution to the Corporation, and whose leadership in cultural life and high qualities of character and personal reputation bring honor to the Corporation. The members shall be invited to attend all regular and special meetings of the Board of the Corporation, but except for their chair shall not be entitled to vote at such meetings. The Board of the Corporation shall be at liberty to call upon the members of the Honorary Board, either individually or as a board, for such advice, counsel or assistance as it may deem appropriate.

Section 2. MEMBERSHIP

Members of the Corporation to be considered for membership on the Honorary Board shall be proposed by the Governance Committee, in collaboration with the Honorary Board leadership and after performing a confidential request to the members of the Board of the Corporation for input and recommendations, and shall be voted upon by that Board at any regular meeting. Membership shall be for an indefinite term conditioned, however, on continued membership in the Corporation. A member is entitled to resign at any time.

Section 3. OFFICERS, TERMS, GOVERNANCE

The Honorary Board shall have a chair and may have one or more vice-chairs. Officers shall be selected from among the members of the Honorary Board and shall be nominated by the Governance Committee and elected by the Board at the time, in the manner, for a term, and subject to the same provisions as apply to officers of the Corporation as set out in Article IV of these By-Laws. The normal service of the chair shall be three successive one-year terms. The Honorary Board may adopt by-laws for its governance, subject to revision by the Board of the Corporation.

ARTICLE VII.

**BOARD OF THE ROCHESTER PHILHARMONIC
YOUTH ORCHESTRA**

Section 1. PURPOSE AND POWERS OF THE BOARD

There shall be a board of directors of the Rochester Philharmonic Youth Orchestra (“RPYO”) the purpose of which shall be to support the formal statement of goals of the RPYO by providing supervisory oversight and final approval of all RPYO activities. The RPYO board’s goals are that each young musician is provided with the finest musical experience possible and that the level of performance of the ensemble reaches its greatest potential. The RPYO board shall have final powers in all areas excepting that the RPYO budget shall require a vote of approval by the Corporation’s Board.

Section 2. MEMBERSHIP; ORGANIZATION

The chair of the board of the RPYO shall be the person who is serving from time to time as the chair of the Corporation's Committee on Education and Outreach. The RPYO By-laws may provide rules for the further membership of the board, nomination, terms, conduct of its business, detailed responsibilities, goals of the RPYO, rules for its youth membership, committees, advisory boards, housekeeping and all other matters of organization or operation, and may provide for indemnification and insurance by the Corporation.

Section 3. RPYO BY-LAW AMENDMENTS

Amendments to the RPYO by-laws may be made if written notification of the proposed amendment is given to each RPYO board member one week in advance of any meeting. Discussion shall occur at the meeting and a vote on the amendment will occur at the following meeting. If approved by the RPYO board, such amendment will become effective upon approval by the Corporation's Board.

ARTICLE VIII

CONFLICTS OF INTEREST AND OTHER POLICIES

The Board shall adopt by resolution, and keep current by at least annual review, policies addressing Conflicts of Interest, Related Party Transactions, and Whistleblower Protection in compliance with New York mandates, and may from time to time adopt such other rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation and governance of the Corporation.

ARTICLE IX

NOTICE AND OTHER COMMUNICATIONS

Section 1. NOTICE: EFFECTIVE DATE OF DELIVERY

(a) Mail: If mailed, notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the addressee at his, her or its address as it appears on the Corporation's record of members, or list of Directors, or of committee members, as the case may be, or, if the addressee shall have filed with the Secretary a request that notices be mailed to some other address, then to such address. If a corporate Member has requested in writing that notice of member meetings be delivered by first class mail, then that method shall be used for that addressee.

(b) Fax or email: If sent by facsimile telecommunication or mailed electronically, notice is given when directed to the addressee at his, her or its fax number or email address as it appears on the Corporation's record of members, or list of Directors, or of committee members, as the case may be; except, however, such notice shall not be deemed to have been given if (1) the Corporation is unable to deliver two consecutive notices to the addressee by fax or email, or (2) the Corporation otherwise becomes aware that notice cannot be delivered to the address by such method. An affidavit of the Secretary or other person giving the notice that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

Section 2. COMMUNICATIONS TO THE CORPORATION

(a) If members, Directors or officers are required or allowed to deliver a date-sensitive communication to the Secretary or other officer of the Corporation or to meeting inspectors (e.g., Ballot, Proxy, Waiver, Consent, Demand, Notice of Resignation) the item shall:

(i) if delivered in person or by first class mail or by fax, be in writing, dated and signed by or showing the signature of the individual, and shall set forth legibly the signer's name and address; and.

(ii) if it is sent by email it shall also add any further information necessary to assure the recipient that the transmission was made or authorized by the sender.

(b) The addressee officer's mail and email address or fax number may be secured by calling the corporate office.

(c) The item is deemed delivered as specified for giving notice in (a) and (b) of Section 1(a) above, depending on manner of delivery.

ARTICLE X

FINANCE AND CONTRACTS

Section 1. FISCAL YEAR

The fiscal year of the Corporation shall commence on September 1 in each calendar year and end on August 31 of the following year unless otherwise authorized by the Board.

Section 2. LOANS

No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board.

Section 3. CHECKS, DRAFTS, ETC.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board.

Section 4. DEPOSITS

All funds and/or securities of the Corporation shall be promptly deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 5. EXECUTION OF CONTRACTS AND OTHER INSTRUMENTS

The Board, except as in these By-Laws otherwise provided, may by resolution authorize any officer or officers, agent or agents, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or

confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these By-Laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 6. ASSIGNMENT AND TRANSFER OF SECURITIES

The Board, except as in these By-Laws otherwise provided, may by resolution authorize any officer or employee, in the name of and on behalf of the Corporation to assign or to endorse for transfer, under the corporate seal or otherwise, and to deliver, any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Corporation.

ARTICLE XI

GENERAL

Section 1. FORM OF SEAL

The seal of the Corporation shall be circular in form with the words “Rochester Philharmonic Orchestra, Inc.” in the outer circle and “Incorporated 1930” in the inner circle.

Section 2. CONDUCT OF MEETINGS

Except as provided in the Certificate of Incorporation or these By-Laws, all meetings of the members, Board, committees of the Board, and of members, boards and committees of the Corporation’s affiliated associations shall be conducted in accordance with *Robert’s Rules of Order-Revised*; provided, however, that no action taken by such an entity without full observance of such rules shall be invalid for that reason alone if no objection to the nonconformity is made during such meeting.

Section 3. GENDER AND NUMBER

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, singular or plural as the identity of the person or persons may require.

Section 4. HEADINGS

Article and section titles and captions contained in these By-Laws are inserted only as a convenience and for reference, and in no way define, limit or extend the intent of any provision hereof.

Section 5. DEFINITIONS

(a) Corporation: The term Corporation for the purpose of these By-laws shall mean the Rochester Philharmonic Orchestra Inc., including in proper contexts its unincorporated and affiliated associations.

(b) Orchestra: The term Orchestra for the purposes of these By-laws shall mean the collective musicians of the ensemble known as the Rochester Philharmonic Orchestra, and shall not mean the Corporation of similar name.

(c) Nomenclature: For the purpose of these By-laws, Chair, Vice Chair, President, Secretary and Treasurer, with capital first letter, shall mean officers of the Corporation. Officers of committees or affiliated groups are written in lower case letters.

ARTICLE XII

INDEMNIFICATION AND INSURANCE

Section 1. AUTHORIZED INDEMNIFICATION

Unless clearly prohibited by law or Section 2 of this Article, the Corporation shall indemnify any person (“Indemnified Person”) made, or threatened to be made, a party in any action

or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Corporation, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (a) is or was a Director or officer of the Corporation, or (b) in addition is serving or served, in any capacity, at the request of the Corporation, as a Director or officer of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Corporation shall have consented to such settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

Section 2. PROHIBITED INDEMNIFICATION

The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes, or the Board in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 3. ADVANCEMENT OF EXPENSES

Unless clearly prohibited by law or Section 2 of this Article, the Board may approve Corporation indemnification as set forth in Section 1 of this Article or advancement of expenses as set forth in Section 3 of this Article, to a person who (or whose testator or intestate) is or was employed by the Corporation or who is or was a volunteer for the Corporation, and who is made, or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Corporation in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law or by reason of Section 2 of this Article. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

Section 4. DETERMINATION OF INDEMNIFICATION

Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court the Board shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-laws. Before indemnification can occur the Board must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in deliberations of the matter. If a quorum of disinterested Directors is not obtainable, the Board shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-laws.

Section 5. BINDING EFFECT

Any person entitled to indemnification under these By-laws has a legally enforceable right to indemnification which cannot be abridged by amendment of these By-laws with respect to any event, action or omission occurring prior to the date of such amendment. In the event that any of the provisions of this Article is held by a court of competent jurisdiction to be invalid, void or

otherwise unenforceable, the remaining provisions of this Article shall remain enforceable to the fullest extent permitted by law.

Section 6. INSURANCE

The Corporation is not required to purchase Directors' and officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article or operation of law, and, if compliant with special Insurance Department procedures, it may insure directly the Directors, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

Section 7. NON-EXCLUSIVE RIGHTS

The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board is authorized to enter into agreements on behalf of the Corporation with any Director, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with potential indemnification in addition to the provisions therefore in this Article, subject in all cases to the limitations of Section 2 of this Article.

**ARTICLE XIII
AMENDMENTS**

Section 1. AMENDMENT BY THE BOARD

The By-Laws of the Corporation may be amended, repealed, or adopted by the Board at a regular or special meeting where the intent for such action and a concise statement of the proposal has been incorporated in the notice of the meeting, and it shall take effect upon passage; provided,

however, that any change so made must be brought to the membership for ratification at the next annual meeting or at a special meeting, and further provided that any by-law changes adopted by the Board shall be reported contemporaneously to the members by an informational mailing or by posting on the corporate website.

Section 2. AMENDMENT BY MEMBERS

(a) Amendment, repeal or adoption of By-Laws, whether on initiative of the Board for ratification or of members pursuant to the process of (b) of this section, shall be by a majority of members present in person, by proxy, or by ballot, who would be entitled to vote if the subject were the election of Directors.

(b) The Secretary, upon receipt not later than six (6) weeks prior to an Annual Meeting, of any proposed amendment, repeal, or adoption signed by twenty-five (25) members of the Corporation who are, at the time of receipt, qualified to vote in the election of Directors, shall cause the proposal to be placed on the agenda, notice and ballot of the Annual Meeting.

(c) The notice of a meeting of members at which a By-Law change shall be proposed shall meet the By-Laws' requirements for such notice, and shall also contain a concise statement of the proposed amendment, repeal or adoption; and the Secretary, not later than four (4) weeks before the meeting, shall cause a full copy of the proposed text to be placed on the corporate website.