

CERTIFICATE OF FORMATION
OF
TEXAS A&M RESEARCH FOUNDATION

Article 1 – Name and Type of Entity

1.1 The name of the corporation is Texas A&M Research Foundation. The corporation is a non-profit corporation.

Article 2 – Duration

2.1 The period of its duration is perpetual.

Article 3 – Purpose

3.1 The corporation is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes and to relieve the burdens of government within the meaning of §501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); in particular to promote the specific purposes of encouraging, fostering, and conducting scientific investigations and research; by training and developing persons for the conduct of such investigations and research; and by acquiring and disseminating knowledge in relation thereto (the “Purposes”).

3.2 In furtherance of its Purposes, the corporation may:

- (a) facilitate research initiatives and opportunities by providing administrative support through contracts, grants, and other means;
- (b) seek, acquire, receive, hold, administer, and use either the principal or income therefrom, of gifts, grants, contracts, and agreements;
- (c) assist in the generation and disposition of intellectual property for the public benefit, including through the utilization of funds consequent to the generation and disposition of intellectual property for further research, education, and public services related to the Purposes;
- (d) acquire, construct, or otherwise provide buildings, grounds and other facilities, improvements, and equipment related to the Purposes; participate in public-private partnerships and other affiliations, as well as cooperation and coordination agreements with any other public or private entity for furthering the Purposes; and
- (e) Perform such other functions as may be necessary or appropriate to fulfill the Purposes.

3.3 The corporation shall also have, use, and enjoy any and all powers necessary or properly incident to or connected with the foregoing Purposes, or any of them, including the power to acquire in any lawful manner such property, real, personal, or mixed, or interest therein, as may be necessary for the transaction of its business and may hold, use, lease, sell, mortgage, pledge, assign, transfer, or convey the same or any part thereof. The corporation may receive by gift, devise, bequest, or otherwise any money or property to be used, either the principal or the

income therefrom, for the furtherance of any of the Purposes or for any other purpose which may hereafter be or become within its corporate powers.

Article 4 – Management

4.1 The direction and management of the affairs of the corporation and the control and disposition of its assets shall be vested in a board of directors (“Board of Directors”) composed of such number of persons (not less than three (3) nor more than nine (9)) as may be fixed by the bylaws of the corporation.

4.2 The Chief Operating Officer of The Texas A&M University System (“TAMUS”) Office of Sponsored Research Services, or the equivalent of this position should the title later be changed; the executive director of the TAMUS Office of Sponsored Research Services (“OSRS”); and the president of the corporation shall each be ex officio, voting directors of the corporation. The Board of Directors shall elect such other directors as may be permitted under the bylaws of the corporation.

4.3 Each director shall hold office for the term for which he or she is elected as specified in the bylaws of the corporation, and until his or her successor shall have been duly elected and qualified unless such director is sooner removed in the manner provided in the bylaws of the corporation or until such director resigns.

4.4 The bylaws of the corporation shall provide the manner for electing directors, voting (including, but not limited to actions by written consent requiring less than unanimous consent), meetings, and notice thereof pertaining to the directors and committees thereof.

4.5 Persons serving as directors shall not receive any salary or compensation for their services as directors; provided, however, that nothing contained herein shall be construed as precluding any director from receiving compensation in a reasonable amount for personal services rendered (other than services as a director) that are reasonable and necessary in carrying out the corporation’s purposes as the board may from time to time determine. A director shall be entitled to reimbursement for reasonable expenses incurred in carrying out such person’s duties as a director.

Article 5 – Membership

5.1 The corporation shall have no members.

Article 6 – Power of the Board of Directors

6.1 The authority to add, amend, or delete provisions of the certificate of formation or the bylaws of the corporation shall be vested in the Board of Directors.

Article 7 – Limitation on Activities

7.1 Notwithstanding any other provision of this certificate of formation, the corporation shall not engage, participate or intervene in any activity or transaction which would result in the loss by the corporation of its status as an organization exempt from Federal income taxation under §501(a) of the Code, or corresponding provisions hereafter in effect, as an organization described

in §501(c)(3) of the Code, or corresponding provisions hereafter in effect, and the use, directly or indirectly, of any part of the assets of the corporation in any such activity or transaction is expressly prohibited.

7.2 Anything to the contrary herein notwithstanding, the corporation shall:

- (a) make distributions at such time and in such manner as not to subject the corporation to tax under §4942 of the Code, or corresponding provisions hereafter in effect;
- (b) not engage in any act of self-dealing as defined in §4941(d) of the Code, or corresponding provisions hereafter in effect, which would be subject to tax under §4941 of the Code, or corresponding provisions hereafter in effect;
- (c) not retain any excess business holding as defined in §4943(c) of the Code, or corresponding provisions hereafter in effect, which would subject the corporation to tax under §4943 of the Code, or corresponding provisions hereafter in effect;
- (d) not make any investments which would subject the corporation to tax under §4944 of the Code, or corresponding provisions hereafter in effect;
- (e) not make any taxable expenditures as defined in §4945(d) of the Code, or corresponding provisions hereafter in effect, which would subject the corporation to tax under §4945 of the Code, or corresponding provisions hereafter in effect.
- (f) not permit any part of the net earnings of the corporation to inure to the benefit of or be distributed to any director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for personal services rendered to or for the corporation affecting one or more of its purposes);
- (g) not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise;
- (h) not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Article 8 – Distribution of Assets in the Event of Dissolution

8.1 Pursuant to §22.304(a) of the Texas Business Organizations Code (“BOC”), after all liabilities and obligations of the corporation in the process of winding up are paid, satisfied and discharged in accordance with §11.053 of the BOC, the property of the corporation shall be applied and distributed as follows:

- (a) property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and
- (b) the remaining properties of the corporation shall be distributed only for tax exempt purposes to: (i) TAMUS for the benefit of the System members, provided that at the time of such dissolution TAMUS is then qualified as a governmental organization under §170(c)(1) of the Code (or corresponding provisions hereafter in effect); (ii) such organization or organizations organized and operated exclusively for purposes described in §501(c)(3) of the Code (or corresponding provisions hereafter in effect) which, in the opinion of the Board of Directors, shall most nearly carry forward the purposes and objectives of the corporation; or (iii) or to such other organization(s) exempt from taxation under §501 of the Code (or corresponding provisions hereafter in effect). The

foregoing shall be accomplished under a plan of distribution adopted by the Board of Directors in compliance with Chapter 22 of the BOC and in accordance with state and federal law.

8.2 Any property remaining after distribution under the plan of distribution shall be distributed by a district court of the county in which the corporation's principal office is located to one or more organizations described in §501(c)(3) of the Code. The court shall make the distribution in the manner the court determines will best accomplish the general purposes for which the Corporation was organized.

Article 9 – Liability

9.1 Pursuant to §7.001 (Limitation of Liability) of the BOC, a director of the corporation shall not be liable to the corporation for monetary damages for an act or omission in the director's capacity as a director, except that this Article 9 does not eliminate or limit the liability of a director for:


- (a) A breach of the director's duty of loyalty to the corporation;
- (b) An act or omission not in good faith that constitutes a breach of duty of the director to the corporation or that involves intentional misconduct or a knowing violation of the law;
- (c) A transaction from which the director received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the director's duties; or
- (d) An act or omission for which the liability of a director is expressly provided by an applicable statute.

9.2 Notwithstanding the foregoing, if the BOC or any other statute of the State of Texas hereafter is amended to authorize the further elimination or limitation of the liability of directors of the corporation, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the statutes of the State of Texas, as so amended, and such elimination or limitation of liability shall be in addition to, and not in lieu of, the elimination and limitation on the liability of a director of the corporation provided by the foregoing provisions of this Article 9.

9.3 Any repeal of or amendment to this Article 9 shall be prospective only and shall not adversely affect any limitation on the liability of a director of the corporation existing at the time of such repeal or amendment.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of September, 2012.




Steven R. Garrett, Corporate Secretary
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