

Bylaws\* of

# TEXAS A & M RESEARCH FOUNDATION

## AN ORGANIZATION FOR SPONSORED RESEARCH

### ARTICLE I NAME AND PURPOSE

1.1 *Name.* The name of the corporation is Texas A&M Research Foundation. The corporation will be referred to as the "Foundation" in these Bylaws.

1.2 *Purposes.* The Foundation is organized exclusively for charitable, scientific, literary, and educational purposes as set forth in the Articles of Incorporation of the Foundation. The Foundation shall be operated exclusively for such purposes, and except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of such purposes, no part of its net earnings shall inure to the benefit of, or be distributable to, any Trustee, officer or other private person. No part of the activities of the Foundation shall be carrying on propaganda and the Foundation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office. Further, all funds and money received from the operation of the Foundation are hereby pledged and shall be used solely for the furtherance of the aims and purposes of the Foundation.

1.3 *Offices.* The Foundation may have, in addition to its registered office, offices at such places, both within and without the State of Texas, as the Board of Trustees may from time to time determine or as the activities of the Foundation may require.

### ARTICLE 2 MEMBERS

2.1 *Membership.* Membership in this Foundation shall consist of not more than one hundred (100) individuals called Councilors. Except for System Councilors, whose selection is described in Section 2.2 below, the Board of Trustees shall select individuals to serve as Councilors subject to such qualifications and requirements as the Board shall provide. The President of the Foundation shall be an ex-officio, permanent, voting Councilor.

### 2.2 *System Councilors.*

(a) The following will serve as ex-officio, voting System Councilors: the Chancellor of The Texas A&M University System (the "Chancellor"); the Vice Chancellor for Research, The Texas A&M University System; the President of Texas A&M University; the Vice Chancellor for Agriculture, The Texas A&M University System; the Director of the Texas Transportation Institute; the Vice Chancellor for Health Affairs, The Texas A&M University System; the Vice President for Research and Graduate Studies at Texas A&M University; and the Vice President for Research and Graduate Studies at The Texas A&M University System Health Science Center (or the equivalent of these positions should the titles later be changed).

(b) The following shall also serve as ex-officio, voting System Councilors: one senior official of The Texas A&M University System; one senior official of Texas A&M University; one senior official of The Texas A&M University System Health Science Center; and one senior official of Texas AgriLife Research. These four System Councilors shall be nominated by the Chancellor in consultation with their respective Chief Executive Officers of the System Members. The individuals so nominated as Councilors must have the authority to make decisions and commitments for their respective organizations and be able to devote the time necessary to actively participate in the deliberations of the Councilors.

(c) In addition, the Chancellor, in consultation with the Principal Investigator Advisory Committee, shall nominate two active principal investigators that currently utilize the services of the Foundation to serve as ex-officio, non-voting System Councilors.

(d) The Chancellor, in consultation with the Chief Executive Officer of the respective System Member, shall nominate a senior official from each of two System Members that are not otherwise included in paragraph (b), above and that currently utilize the services of the Foundation to serve as ex-officio, non-voting System Councilors. Such senior officials must be able to devote the time necessary to actively participate in the deliberations of the Councilors.

(e) In addition to their duties as Councilors of the Texas A&M Research Foundation as set forth in these Bylaws, The Texas A&M University System Councilors will also serve as an Advisory Board to the Board of Trustees of the Foundation, the Chair of the Board and the President of the Foundation. In their advisory capacity, The Texas A&M University System Councilors will provide information and advice as to the policies and procedures of the Foundation which will be most effective in assisting the System Members to attain their research goals and will make recommendations to the Board and officers for changes in the policies and procedures of the Foundation.

2.3 *Emeritus Councilors.* The Board of Trustees may appoint as Emeritus Councilors those individuals as it deems advisable. Emeritus Councilors shall be non-voting, but shall otherwise have the same privileges as other Councilors, including attendance at all Councilor meetings, participation in discussions, and rendering advice. Emeritus Councilors shall not be included in the numerical limitation stated in section 2.1 of these Bylaws.

2.4 *Limitations.* No employee of The Texas A&M University System may be a Councilor, except as he or she may qualify under the System Councilor section of these Bylaws.

2.5 *Tenure of Councilors.* All Councilors, when selected as set out in these Bylaws, shall serve for a term of three (3) years and may, upon proper election, succeed themselves. Councilors named in section 2.2(a) of these Bylaws and Emeritus Councilors appointed pursuant to section 2.3 of these Bylaws shall not be subject to this limitation on tenure.

2.6 *Non-Liability of Councilors.* Councilors shall not be individually liable for the debts, liabilities, or obligations of the Foundation.

### ARTICLE 3 MEMBERSHIP MEETINGS

#### 3.1 *Meetings.*

(a) The annual meeting of the Councilors of the Foundation, for a full review of the work of the Foundation for the preceding year and for the transaction of such other business as may properly come before it, shall generally be held in the fourth calendar quarter of each year at such date, place, and time as may be designated from time to time by the Board of Trustees.

(b) Special meetings of the Councilors may be called at any time by resolution of the Board of

Trustees, the Executive Committee, or upon written request of not less than one-fourth of the Councilors.

3.2 *Notice of Meetings.* Notice of all meetings of the Councilors of the Foundation shall be mailed to the Councilors at such addresses appearing on the books and records of the Foundation, not less than ten (10) calendar days prior to any regular or special meeting, and if the notice is for a special meeting, it shall state the nature thereof. Accompanying notices of meetings shall be ballots (or instructions for electronic voting), when applicable, in a form or forms prescribed by the Board of Trustees, for the use of Councilors desiring to vote by ballot (or electronically) upon the election of Trustees or upon any other question which the Board shall deem proper or necessary to submit to a vote by ballot (or electronically); but the omission of the Board of Trustees to prescribe and submit ballots for voting by mail or electronically upon any question (except election of Trustees) shall not prevent consideration and action upon such question at such meeting by Councilors present in person.

3.3 *Quorum.* A quorum of any meeting of the Councilors of the Foundation shall consist of twenty-five (25) voting Councilors but a lesser number may meet and adjourn from time to time until a quorum is secured.

3.4 *Action by Written Consent.* Any action required or permitted to be taken at any meeting of the Councilors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by a sufficient number of Councilors as would be necessary to take that action at a meeting at which a quorum of the Councilors was present and voted. Such consent shall have the same force and effect as a vote at a meeting. An electronic transmission by a Councilor or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Councilor shall be treated as an execution in writing for purposes of this section 3.4.

3.5 *Proxies.* A Councilor may not vote at a meeting of the Councilors by proxy.

### ARTICLE 4 BOARD OF TRUSTEES' MEMBERSHIP AND POWERS

4.1 *Number.* The Board of Trustees shall consist of twenty-seven (27) Trustees, twenty-six (26) of whom shall be selected as described in section 4.3, below. Each of the Trustees must be a Councilor. The incumbent President of the Texas A&M Research Foundation shall also be an ex-officio, permanent, voting Trustee. As such, sections 4.2, 4.3 and 4.4 of this Article 4 have no application to the President.

4.2 *Term.* Trustees, except as provided in section 4.7, below, shall be elected for a term of three (3) years, so divided, however, that the terms of office for not less than six (6) Trustees shall expire each year. Terms of office shall begin and end at the election at the Fall meeting or until a successor shall have been duly elected, even if a duly elected Trustee's term as Councilor has expired in the interim. Trustees are limited to a maximum of three consecutive terms as a Trustee. Emeritus Trustees appointed pursuant to section 4.7 of these Bylaws shall not be subject to this limitation on tenure.

4.3 *Nominations.*

(a) Trustees nominated from the System Councilors shall be voting System Member Trustees, and shall be:

- (1) one senior official of The Texas A&M University System;
- (2) one senior official of Texas A&M University;
- (3) one senior official of The Texas A&M University System Health Science Center; and
- (4) one senior official of Texas AgriLife Research.

These four System Trustees shall be nominated by the Chancellor in consultation with their respective Chief Executive Officers of the System Members. The individuals so nominated as Trustees must have the authority to make decisions and commitments for their respective organizations and be able to devote the time necessary to actively participate in the deliberations of the Board of Trustees.

(b) In addition, the Chancellor, in consultation with the Principal Investigator Advisory Committee, shall nominate two active principal investigators that currently utilize the services of the Foundation to serve as ex-officio, non-voting System Trustees.

(c) The Chancellor, in consultation with the Chief Executive Officer of the respective System Member, shall nominate a senior official from each of two System Members that are not otherwise included in the paragraph above and that currently utilize the services of the Foundation to serve as ex-officio, non-voting System Trustees. Such senior officials must be able to devote the time necessary to actively participate in the deliberations of the Board of Trustees.

(d) All other non-System Trustees shall be elected from the Non-System Councilors after having been nominated by the Nominating Committee.

4.4 *Election.* The election of Trustees, other than Emeritus Trustees, when duly nominated, shall be by general mail or electronic vote of all voting Councilors. If the Councilors have not elected one or more successor Trustees as of the date of the annual Fall meeting for the year in which the term of such Trustee or Trustees has expired, such successor Trustee or Trustees shall be elected by the Councilors at the next regular or special meeting thereafter. In the event that the number of Trustees constituting the Board of Trustees is increased by action of the Councilors or amendment of these Bylaws, any trusteeship to be filled by reason of such increase shall be filled by election by the Councilors at the next regular or special meeting thereafter.

4.5 *Vacancies.* A vacancy shall be declared in any seat on the Board of Trustees upon the death, resignation, incapacity, or removal of the occupant thereof. The Board of Trustees shall fill all vacancies that may occur and a person so chosen shall hold office until the next annual election of Trustees at which time the vacancy shall be filled for the remainder of the unexpired term in the manner prescribed by these Bylaws for election of Trustees.

4.6 *Duties and Powers.* Each Trustee, other than non-voting Trustees, along with the President of the Texas A&M Research Foundation, shall be entitled to one vote on any question or motion submitted to the general vote of the Board of Trustees. The Trustees shall have charge of the business and affairs of the Foundation, shall have authority to fix the compensation and terms of employment of any and all employees and shall have authority to make, prescribe, and enforce all rules and regulations for the conduct of the business of the Foundation and the management and control of its property. It shall be the duty of the Board of Trustees to promulgate and enforce such rules and regulations as may be proper or necessary concerning the research work done directly or indirectly by the Foundation.

4.7 *Emeritus Trustees.* The Board of Trustees may appoint as Emeritus Trustees such individuals as the Board of Trustees deems advisable. Emeritus Trustees shall be nonvoting, but shall otherwise have the same privileges and powers as voting Trustees, including attendance at all Trustee meetings, participating in discussions, and rendering advice. Emeritus Trustees shall not be included in the numerical limitation stated in section 4.1 of these Bylaws.

4.8 *Resignation.* Each Trustee shall have the right to resign at any time upon written notice thereof to the President or Corporate Secretary of the Foundation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof, and

the acceptance of such resignation shall not be necessary to make it effective.

## ARTICLE 5 TRUSTEES' MEETINGS

5.1 *Quorum.* A quorum of the Board of Trustees shall consist of fifteen (15) voting Trustees.

5.2 *Regular Meetings.* There will be no less than two regular meetings each year. The Spring Meeting of the Board of Trustees shall generally be held during the second calendar quarter of each year at such date, time, and place as the Board of Trustees shall from time to time determine. The Fall Meeting shall generally be held during the fourth calendar quarter of each year at such date, time, and place as the Board of Trustees shall from time to time determine. These meetings may be held at any place within the State of Texas.

5.3 *Special Meetings.* Special meetings of the Board of Trustees may be held at any time and any place within the State of Texas upon call of the Chair of the Board of Trustees, the President of the Foundation, or upon the request of ten (10) or more Trustees.

5.4 *Notice of Meetings.* Notice of all meetings of the Board of Trustees shall be given by mail, courier, or electronic telecommunication at such addresses or numbers that appear on the books and records of the Foundation not less than ten (10) calendar days prior to the date of such meeting. Nothing in these Bylaws, however, shall prevent Trustees from waiving, in writing, notice of any meeting. Any notice required or permitted by mail or courier shall be deemed given at the time when the same is deposited, postage prepaid, in the U.S. mail or delivered to the courier service.

5.5 *Methods of Meeting.* Regular or special meetings of the Board of Trustees may be held in person, conference telephony, videoconference, Internet, or similar remote communications technology, provided each Trustee electing to participate in the meeting can communicate concurrently with each other participant. Participation in such meetings shall constitute presence in person at such meeting, except where a person participates in the meeting for the express and sole purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

5.6 *Voting.* The affirmative vote of a majority of the voting Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees, except as may be otherwise specifically provided by law or by these Bylaws.

5.7 *Proxies.* (a) At the time of the election of System Member Trustees, the respective Chief Executive Officers of each of the System Members referenced in section 4.3(a) of these Bylaws will designate a person who is to act as a substitute for the System Member Trustee identified in section 4.3(a). System Member Trustees identified in section 4.3(a) of these Bylaws may be represented by the substitute for the System Member Trustee at meetings of the Board of Trustees and committees upon which they serve. Such substitute for the System Member Trustee shall have the full powers and authority of the absent System Member Trustee being represented, so long as the procedure described in section 5.7(b) below is followed. A System Member Trustee may not be represented except by the designated substitute and no further substitutions, either for the System Member Trustee or the substitute for the System Member Trustee shall be permitted. Substitutes for System Member Trustees shall not be included in the number of Trustees identified in section 4.1 of these Bylaws.

(b) For each meeting at which a substitute for the System Member Trustee is to act for a System Member Trustee, the Chief Executive Officer of the respective System Member must deliver a written notice to the Chair of the Board of Trustees (or chair of the committee in the case of committee meetings) explaining the reason for the System Member Trustee's absence from the meeting and authorizing the substitute for the System Member Trustee to act for the absent System Member Trustee. Such notice must be received no less than three business days prior to the scheduled time of the meeting.

(c) Except as provided in this section 5.7 a Trustee may not vote at a meeting of the Board of Trustees or a meeting of a committee by proxy.

5.8 *Action by Written Consent.* Any action required or permitted to be taken at any meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by a sufficient number of Trustees as would be necessary to take that action at a meeting at which a quorum of the Trustees was present and voted. Such consent shall have the same force and effect as a vote at a meeting. An electronic transmission by a Trustee, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Trustee shall be treated as an execution in writing for purposes of this section 5.8.

5.9 *Conduct of Meetings.* The Chair of the Board of Trustees, and in his or her absence the President, shall call meetings of the Board of Trustees to order, and shall preside at such meetings, and the Corporate Secretary of the Foundation shall act as secretary of all

such meetings, but in the absence of the Corporate Secretary, the Board Chair or President may appoint any person present to act as secretary of the meetings.

5.10 *Waiver.* Whenever any notice is required to be given to any Councilor, Trustee, or committee member under the provisions of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated in therein, shall be equivalent to the giving of such notice.

## ARTICLE 6 OFFICERS

6.1 *Number.* The officers of the Foundation shall consist, at a minimum, of the Chair of the Board of Trustees, President, Corporate Secretary, and Treasurer; and may, in the discretion of the Board of Trustees, include one or more other officer positions. No officers except the Chair of the Board of Trustees and the President shall be Trustees of the Foundation. The offices of President and Corporate Secretary may not be held by the same person at the same time.

6.2 *Election and Term of Office.*

(a) The Chair of the Board of Trustees shall be a Trustee elected annually at the Fall Meeting by a majority vote of all voting Trustees, including the voting System Trustees. The Chair of the Board of Trustees shall always be a non-System Trustee; shall take office immediately and serve until a successor is duly elected; and may be re-elected for as many terms as the Trustees deem appropriate, subject to the term limitations of Trustees stated in these Bylaws.

(b) The President of the Foundation shall be elected annually at the Fall Meeting by the Board of Trustees and shall serve at the pleasure of the Board.

(c) All other Foundation officers shall be elected annually by the Board of Trustees upon the recommendation of the President and shall serve at the pleasure of the Board and the President of the Foundation.

(d) The President may appoint such other agents in addition to those provided for in Article 6 of these Bylaws, as the President may deem necessary. Such persons shall have such authority and perform such duties as shall from time to time be prescribed by the President. All appointive agents shall hold their respective offices or positions at the pleasure of the President, and may be removed from office or discharged at any time with or without cause, provided that removal without cause shall not prejudice the contract rights, if any, of such agents.

6.3 *Vacancies.* Whenever a vacancy shall occur in the office of the Chair of the Board of Trustees, President, Corporate Secretary, or Treasurer of the Foundation, such vacancy shall be filled by the Board of Trustees by the election of a new officer who shall take office on the date of his or her election and shall hold such office until the earlier of the date of the next Fall Meeting of the Board of Trustees following the date of his or her election, and thereafter, until his or her successor shall have been duly elected and qualified, or the date such officer resigns or is removed. Other officer positions that have become vacant may be filled by the President with the concurrence of the Chair of the Board of Trustees. Except for the President and Corporate Secretary, the Board of Trustees may permit an officer position to remain vacant.

6.4 *Duties of the Chair of the Board of Trustees.* The Chair of the Board of the Foundation shall preside at all meetings, shall perform generally the duties customarily required of such officers, shall be the Chair of the Executive Committee, shall be a member of the Audit Committee, and shall perform such other duties as are assigned by the Board of Trustees.

6.5 *Duties of the President.* The President shall be the Chief Executive Officer of the Foundation responsible to the Board of Trustees for the administration of its business and affairs. The President shall serve as a permanent, ex-officio, voting Trustee and shall preside at meetings of the Board of Trustees in the absence or disability of the Chair of the Board. The President shall execute, in the name of the Foundation, deeds, mortgages, bonds, contracts or other instruments authorized by the Board of Trustees, except where otherwise provided by statute or by the Bylaws; and in general shall perform all acts and duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Trustees.

6.6 *Duties of the Vice Presidents.* The Vice Presidents shall be operating managers of the Foundation staff, shall report to the President and when so designated by the President or Chair of the Board shall act for the President in the event of absence, disability, or when specifically delegated.

6.7 *Duties of the Corporate Secretary.* The Corporate Secretary shall have charge of the seal and corporate books and records of the Foundation and shall issue notices of meetings to the Councilors and Trustees, and with the President, shall execute and sign such instruments as require the Corporate Secretary's signature or attestation, and shall make reports and perform such other duties as are incident to this office or may be required by the Board of Trustees.

6.8 *Duties of the Treasurer.* The Treasurer shall have the custody of all monies and securities of the Foundation; receive and deposit funds and maintain bank accounts in such banks as the Trustees may direct; render statements of the condition of finances at regular meetings of the Trustees; sign or countersign all checks, drafts, and promissory notes; and perform all duties usually incident to such office or which may be delegated by the Board of Trustees. The Treasurer shall arrange for an annual audit of the books by a Certified Public Accountant, selected and contracted for by the Audit Committee, at the end of each fiscal year ending August 31, the expense of such audit to be paid from Foundation funds. The Treasurer shall be bonded, the cost of such to be paid from Foundation funds in the amount and with or upon the conditions and surety acceptable to the Trustees.

## ARTICLE 7 COMMITTEES

7.1 *Executive Committee.* (a) The Executive Committee shall consist of the Chair of the Board, who shall also be Chair of the Executive Committee, the President of the Texas A&M Research Foundation and five (5) non-System Trustees to be selected annually by the Board. The Trustees representing The Texas A&M University System, Texas A&M University, The Texas A&M University System Health Science Center, and Texas AgriLife Research shall also be permanent, voting members of the Executive Committee.

(b) The Executive Committee shall have general oversight of all matters affecting the policy, property, and function of the Foundation, subject, however, to the control and direction of the Board of Trustees, and shall make reports to the Board as may be required. During intervals between meetings of the Board, the Executive Committee shall have and enjoy and may exercise the power and authority of the Board of Trustees in the management of the property and affairs of the Foundation; and when duly reported to the Board, the acts of the Executive Committee shall stand as the acts of the Board of Trustees unless then disapproved by the Board.

(c) Meetings of the Executive Committee may be held at any time and place within the State of Texas upon call of the Chair of the Board of Trustees or the President of the Foundation.

7.2 *Nominating Committee.* The Nominating Committee shall consist of the Chancellor of The Texas A&M University System, who shall serve as Chair of the Nominating Committee, and two (2) non-System Trustees selected by the Board at the Fall Meeting. The Nominating Committee shall make recommendations to the Board of Trustees at the Fall

Meeting for officers, Councilors, and Trustees and at such other times as the Nominating Committee or the Board of Trustees deem appropriate.

7.3 *Audit Committee.* The Audit Committee shall consist of five (5) independent non-System Trustees, selected by the Board of Trustees at the Fall Meeting. The Chair of the Board of Trustees shall be a permanent member of the Audit Committee. The Chair of the Audit Committee shall be appointed by the Board of Trustees from among the Audit Committee members. Each member of the Audit Committee must be financially knowledgeable, and one member of the Audit Committee shall have accounting or related financial expertise. The Audit Committee shall monitor and coordinate the activities of the outside auditor and third-party auditors; provide the Board with a status of management actions necessary to address auditor findings; recommend the selection of the outside auditor; and report to the Board of Trustees on the activities of the Audit Committee.

7.4 *Principal Investigator Advisory Committee.* The Principal Investigator Advisory Committee shall consist of twelve (12) currently active principal investigators, each of whom utilizes the services of the Foundation. The Chief Executive Officers of System Members that have a minimum of four (4) million dollars in expenditures per year through projects administered by the Foundation shall each be eligible to nominate to the Board of Trustees a minimum of one member to serve on the Committee. Nominations for the remaining positions on the Committee shall be distributed pro rata among the eligible System Member Chief Executive Officers based upon the System Members' respective levels of project expenditures through the Foundation. Members of the Principal Investigator Advisory Committee shall serve three year terms. The Principal Investigator Advisory Committee shall provide advice and information to the Board of Trustees concerning the level of services provided by the Foundation to its stakeholders.

7.5 *Other Committees.* The Board of Trustees or the Chair of the Board of Trustees may provide for such other committees as may be deemed proper or necessary and may determine the selection of members of such committees and prescribe their duties. Each such other committee shall consist of two or more persons, who may, but need not be, limited to the Trustees of the Foundation. Appointment of persons to such other committees shall be for terms prescribed by the Board of Trustees or the Board Chair upon their appointment. The Chair of the Board of Trustees shall appoint the person to act as chair of each respective committee.

7.6 *Quorum and Voting.* At all meetings of the committees identified in this Article 7, a quorum for

the transaction of business shall be the presence of a majority of the members of the committee. The affirmative vote of a majority of the members of the committee present at a meeting at which a quorum is present shall be the act of the committee.

7.7 *Meetings and Notices.* Meetings of a committee may be called by the President or the chair of the committee. Each committee shall meet as often as necessary to perform its duties. Notice may be given at any time and in any manner reasonably designated to inform the members of the committee of the time and place of the meeting.

7.8 *Methods of Meeting.* Meetings of committees may be held in person, by conference telephony, videoconference, Internet, or similar remote communications technology, provided each committee member electing to participate in the meeting can communicate concurrently with each other participant.

7.9 *Vacancies.* A vacancy on a committee shall be filled for the unexpired portion of the term of the former occupant in the same manner in which an original appointment to such committee is made.

#### ARTICLE 8 RESEARCH WORK

8.1 *General Policy.* Except as may be expressly authorized by the Board of Trustees, it shall be the policy of the Foundation to operate its research program through The Texas A&M University System. This shall be done by written agreements between the Foundation and the Board of Regents of The Texas A&M University System and between the Foundation and each of the System Members utilizing the services of the Foundation. With the specific approval of the Board of Trustees, the Foundation may independently conduct research activities utilizing its own or leased facilities and staff where it is necessary in support of the Foundation's mission to foster and encourage education and learning in all fields.

8.2 *Intellectual Property.* The ownership of any and all intellectual property (including, but not limited to patents, copyrights, and know-how) arising from any research or other project conducted by a System Member through the Foundation shall vest with the System Member or The Texas A&M University System as determined by the System Policies and Regulations, except as otherwise may be provided in written agreements between the Foundation and the System Members.

8.3 *Contract Needed.* No research work shall be undertaken (for compensation) except pursuant to a contract in writing.

8.4 *Foundation Research.* No research work shall be undertaken at the expense of the Foundation except in such cases as the Board of Trustees shall, by general or specific resolution, authorize.

#### ARTICLE 9 GIFTS AND DONATIONS

9.1 *Approval Required.* No donation or gift to the Foundation shall be accepted except subject to the approval or confirmation of the Board of Trustees.

9.2 *Restrictions.* No gift or donation shall in any event be accepted which shall or may require the payment of any annuity or other charge from the funds or resources of the Foundation, except from the income and/or principal of such gift or donation itself, and further except for normal operating, maintenance, and insurance costs.

#### ARTICLE 10 INDEMNIFICATION

10.1 *Mandatory Indemnification.* Article 1396-2.22A of the Texas Non-Profit Corporation Act permits the Foundation to indemnify any person who is or was a Trustee, officer, employee or agent of the Foundation, any person who while a Trustee of the Foundation, is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, and any other person who is not or was not a Trustee, officer, employee, or agent of the Foundation but who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the extent and under the circumstances set forth therein. The Foundation hereby elects to and does hereby indemnify all such persons to the fullest extent permitted or required by such Article. Such indemnity shall be paid promptly upon notice of any such person making a claim for indemnity hereunder, unless (i) there are restrictions to the contrary in the Articles of Incorporation or (ii) any such indemnification would be considered self-dealing or an excess benefit transaction (but only to the extent it would be so considered) under section 4941 or 4958 of the Internal Revenue Code of 1986, as amended, or the regulations thereunder. Such obligation to so indemnify and to so make all necessary determinations may be specifically enforced by resort to any court of

competent jurisdiction. Further, the Foundation shall pay or reimburse the reasonable expenses of such persons covered hereby in advance of the final disposition of any proceeding to the fullest extent permitted by such Article and subject to the conditions thereof.

10.2 *Policy of Insurance.* Article 1396-2.22A.R(1) of the Texas Non-Profit Corporation Act permits the Foundation to purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, employee, or agent of the Foundation or who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his status as such a person, whether or not the Foundation would have the power to indemnify him or her against that liability under Article 1396-2.22A. The Foundation is hereby authorized to purchase and maintain such insurance, as determined by the Board of Trustees; provided, however, that the portion of insurance premium cost which is allocable to the insurance coverage for items not eligible for indemnification under section 4941 or 4958 of the Code or the regulations thereunder be treated as compensation to the officers, directors, employees, and agents of the Foundation so covered.

#### ARTICLE 11 AMENDMENTS

11.1 *Procedure.* Upon recommendation of the Board of Trustees, these Bylaws may be amended,

revised or repealed by the Councilors at a regular or special meeting or by mailed ballot by a simple majority of those voting. The mailed ballot shall state the action to be taken and the reason therefor.

#### ARTICLE 12 GENERAL PROVISIONS

12.1 *Fiscal Year.* The fiscal year of the Foundation shall begin on the 1st day of September and end on August 31 of each year.

12.2 *Books and Records.* The Foundation shall keep correct and complete books and records of account on the accrual basis method of accounting and shall also keep minutes of the proceedings of the meetings of the Councilors, the Board of Trustees, the Executive Committee, and other committees, standing or special.

12.3 *Seal.* The Board of Trustees may adopt a corporate seal to be in such form and to be used in such manner as the Board of Trustees shall direct.

12.4 *Permanent Incapacity.* Any Trustee who shall be incapable of participating in the management and affairs of the Foundation for a continuous period of six months shall be deemed to be "incapacitated" within the meaning of that term as used in these Bylaws.