

**VIRGINIA COMMONWEALTH UNIVERSITY FOUNDATION
AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**ARTICLE I
NAME**

The name of the corporation is Virginia Commonwealth University Foundation (hereinafter referred to as the “Foundation”), a Virginia nonstock corporation.

**ARTICLE II
PURPOSE**

The Foundation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. More specifically, the purposes of the Foundation are to support Virginia Commonwealth University (the “University”) by (1) engaging in fundraising and management of endowment and other assets for the benefit of the University; (2) supporting and advancing the purposes of the University; and (3) administering gifts, grants, bequests, and devises for the support and advancement of the University. Such purposes shall not limit the ability of the Foundation to carry out any other charitable or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. The Foundation shall be operated in a manner that is consistent with the University’s Policy on Relationships with University-Related Foundations to the extent such Policy is not inconsistent with the Foundation’s status as an organization described in section 501(c)(3) of the Internal Revenue Code.

**ARTICLE III
RIGHTS AND RESTRICTIONS**

No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to Trustees, officers, or other private persons 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 its charitable or educational purposes. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE IV DISSOLUTION

Upon the dissolution of the Foundation, and after all of its liabilities and obligations have been paid, satisfied, and discharged, or adequate provisions made therefor, all of the Foundation's remaining assets shall be distributed to or among the University or any one or more foundations affiliated with the University that are organized and operated exclusively for charitable and educational purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code. If none of the University or its affiliated foundations are then in existence or so organized and operated, the Foundation's remaining assets shall be distributed to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code.

ARTICLE V MEMBERS

The Foundation shall have no members.

ARTICLE VI TRUSTEES

The number of Trustees of the Foundation shall be not less than twenty (20) and not more than thirty (30). The Foundation's Board of Trustees shall consist of two classes of Trustees, the Ex Officio Trustees and the Elected Trustees.

(a) Ex Officio Trustees. The Foundation shall have two (2) Trustees who are designated as the Ex Officio Trustees. The Ex Officio Trustees shall be those individuals who are the Rector of the Board of Visitors of the University and the President of the University. An Ex Officio Trustee shall serve *ex officio* for a term that equals his or her tenure in the office specified shall have full voting rights. No individual shall be an Ex Officio Trustee without his or her prior consent.

(b) Elected Trustees. The Foundation shall have not less than eighteen (18) and not more than twenty-eight (28) Trustees who are designated as the Elected Trustees. At the first annual meeting of the Board of Trustees, the number of Elected Trustees shall be divided into three (3) classes with each class containing one-third of the total, as nearly equal in number as possible. The terms of the Elected Trustees in the first class shall expire at the first annual meeting of the Board of Trustees after their appointment, the terms of the Elected Trustees in the second class shall expire at the second annual meeting of the Board of Trustees after their appointment, and the terms of the Elected Trustees in the third class shall expire at the third annual meeting of the Board of Trustees after their appointment. Thereafter, at each annual meeting of the Board of Trustees, one class of Elected Trustees shall be elected by the Board of Trustees for a term of three years beginning on the July 1 immediately following such election, to succeed those whose terms expire. An Elected Trustee may serve two consecutive terms and thereafter shall not be eligible to serve as an Elected Trustee until he or she has not served as an Elected Trustee for a term of one year or more. Partial terms shall not be counted for purposes of the foregoing term limitation. No individual shall be elected as an Elected Trustee without his or her prior consent.

ARTICLE VII
LIMIT ON LIABILITY AND INDEMNIFICATION

7.1 Definitions. For purposes of this Article, the following definitions shall apply:

- (i) “Foundation” means this Foundation only and no predecessor entity or other legal entity;
- (ii) “expenses” include counsel fees, expert witness fees, and costs of investigation, litigation, and appeal, as well as any amounts expended in asserting a claim for indemnification;
- (iii) “liability” means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation, including, without limitation, any excise tax assessed with respect to an employee benefit plan;
- (iv) “legal entity” means a corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise;
- (v) “predecessor entity” means a legal entity the existence of which ceased upon its acquisition by the Foundation in a merger or otherwise; and
- (vi) “proceeding” means any threatened, pending, or completed action, suit, proceeding, or appeal, whether civil, criminal, administrative, or investigative and whether formal or informal.

7.2 Limit on Liability. In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the Trustees and officers of the Foundation shall not be liable to the Foundation.

7.3 Indemnification of Trustees and Officers. The Foundation shall indemnify any individual who is, was, or is threatened to be made a party to a civil, criminal, administrative,

investigative, or other proceeding (including a proceeding by or in the right of the Foundation) because such individual is or was a Trustee or officer of the Foundation, or because such individual is or was serving the Foundation or any other legal entity in any capacity at the request of the Foundation while a Trustee or officer of the Foundation, against all liabilities and reasonable expenses incurred in the proceeding, except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a director or officer of a legal entity controlled by the Foundation shall be deemed service at the request of the Foundation. The determination that indemnification under this section 7.3 is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of Trustees and officers of the Foundation, as provided by law, and in the case of persons other than officers and Trustees of the Foundation, as provided in section 7.4 of this Article; provided, however, that if a majority of the Trustees of the Foundation has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel selected by agreement of such person and the Board of Trustees. Unless a determination has been made that indemnification is not permissible, the Foundation shall make advances and reimbursements for expenses incurred by a Trustee or officer in a proceeding upon receipt of an undertaking from such Trustee or officer to repay the same if it is ultimately determined that such Trustee or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the Trustee or officer and shall be accepted without reference to such Trustee or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that a

Trustee or officer acted in such a manner as to make such Trustee or officer ineligible for indemnification. The Foundation is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its trustees or officers to the same extent provided in this section 7.3.

7.4 Indemnification of Others. The Foundation may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its Trustees and officers pursuant to section 7.3, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the directors, officers, employees, and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the Foundation, and may contract in advance to do so. The determination that indemnification under this section 7.4 is permissible, the authorization of such indemnification, and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board of Trustees, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under section 7.3 of this Article shall be limited by the provisions of this section 7.4.

7.5 Miscellaneous. The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors, and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Foundation. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Foundation, and indemnification under policies of insurance purchased and maintained by the Foundation or others. However, no

person shall be entitled to indemnification by the Foundation to the extent he or she is indemnified by another, including an insurer. The Foundation is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Foundation or any other legal entity at the request of the Foundation regardless of the Foundation's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Foundation from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end, the provisions of this Article are severable.

7.6 Amendments. The rights to indemnification and the advancement and reimbursement of expenses conferred in this Article shall be deemed contract rights between the Foundation and each individual entitled to such rights and shall vest at such time as the act or omission giving rise to the rights under this Article occurs. Once vested, an individual's rights under this Article with respect to such act or omission shall not be reduced or eliminated by any subsequent repeal, modification, or amendment of these Articles of Incorporation or the Foundation's Bylaws.

ARTICLE VIII INTERNAL REVENUE CODE

Each reference in these Articles of Incorporation to a section of the Internal Revenue Code means such section of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.