

**BYLAWS**  
**OF THE**  
**KANSAS BIOSCIENCE AUTHORITY**

**Adopted: October 12, 2006**  
**Amended November 10, 2009**  
**Amended January 26, 2010**  
**Amended July 26, 2011**

**ARTICLE I**  
**STATUTORY CREATION**

The Kansas Bioscience Authority (the “Authority”) was created and established with the enactment of the Kansas Bioscience Authority Act (the “Act”), thereby creating the Authority as a body politic and corporate, and as an independent instrumentality of the State of Kansas. The Act finds and declares that the mission of the Authority is to cause Kansas to be the most desirable state in which to conduct, facilitate, support, fund, and perform bioscience research, development, and commercialization, to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge, and improve the quality of life for the citizens of the State of Kansas.

**ARTICLE II**  
**OFFICES**

Section 2.1 Principal Office. The principal office of the Authority shall be located in Johnson County, Kansas.

Section 2.2 Other Offices. Provided it is consistent with the Act, the Authority may conduct its business, carry on its operations, have other offices and exercise its powers within or outside of the State of Kansas as the Board of Directors of the Authority (“Board”) may designate or the business of the Authority may require.

**ARTICLE III**  
**RIGHTS AND POWERS**

The Act grants to the Authority all the powers necessary to carry out the purposes and provisions set forth in the Act. The Authority is authorized to exercise the powers conferred in furtherance of its corporate and public purposes as set forth in (1) the Act, (2) these Bylaws (“Bylaws”), or (3) any other subsequent statutes applicable to the Authority; provided that no

provision of these Bylaws shall be in conflict with the Act and if a conflict does exist, the Act shall control.

## **ARTICLE IV**

### **BOARD OF DIRECTORS**

Section 4.1 Powers of the Board. The business and affairs of the Authority shall be governed by and under the direction of the Board. In addition to the powers and authorities by these Bylaws expressly conferred upon it, the Board may exercise all such powers of the Authority, and do all such lawful acts and things, as are not expressly prohibited by statute or by these Bylaws.

Section 4.2 Appointment. The Board shall consist of eleven (11) Directors, nine (9) of whom shall be voting Directors, and two (2) of whom shall be non-voting Directors, described more fully as follows:

(a) Nine (9) Directors will be representatives of the general public. They shall be individuals who are recognized for outstanding knowledge and leadership in the fields of finance, business, bioscience research, plant biotechnology, basic research, bioscience manufacturing or product commercialization, health care, legal affairs, education or government. One (1) of the nine (9) Directors shall be an agricultural expert recognized for outstanding knowledge and leadership in the field of bioscience. Of the nine (9) Directors representing the general public, five (5) must be Kansas residents, provided no more than three (3) voting Directors may be appointed from any one (1) congressional district.

(b) Two (2) Directors shall be non-voting Directors and shall represent state research universities and have research expertise. Such non-voting Directors will be appointed by the Kansas Board of Regents.

(c) Of the nine (9) Directors representing the general public, two (2) Directors are appointed by the Governor of Kansas ("Governor"), two (2) Directors are appointed by the Speaker of the Kansas House of Representatives (provided that the Speaker is required to use one of his appointments to select the mandated agricultural expert), and two (2) Directors are appointed by the President of the Kansas Senate. Of the remaining three (3) Directors, one (1) Director is appointed by the by the House Minority Leader, one (1) Director is appointed by the Senate Minority Leader, and one (1) Director is the Kansas Secretary of Commerce. As provided in the Act and in these Bylaws, all voting Directors are subject to Senate confirmation as provided in K.S.A. 75-4315b and amendments thereto. Any Director whose nomination is subject to confirmation during a regular session of the Legislature shall be deemed terminated when the Senate rejects the nomination. No such termination shall affect the validity of any action taken by such Director prior to such termination.

#### Section 4.3 Term of Office.

(a) Of the nine (9) general public voting Directors appointed to the first Authority Board of Directors, the two (2) Directors appointed by the Governor shall be appointed for an initial term of four (4) years, the two (2) Directors appointed by each of the Speaker of the House and President of the Senate, respectively shall have an initial term of three (3) years and the one (1) Director appointed by each of the House and Senate Minority Leaders, respectively, will have initial terms of two (2) years. Each term shall expire on March 15 of each applicable year.

(b) After the expiration of the terms of the Directors of the Authority's first Board of Directors, Directors other than the non-voting Directors appointed by the Board of Regents, shall be appointed for a term of four (4) years each, except in the event of a vacancy, where the appointment shall be for the remainder of the unexpired portion of the term.

(c) Each Director shall hold office for the term of appointment and thereafter until the successor has been confirmed by the Senate pursuant to K.S.A. 75-4315b.

(d) Directors other than the non-voting Directors, are eligible for reappointment but shall not be eligible to serve more than three (3) consecutive four (4)-year terms.

(e) The terms of non-voting Directors appointed by the Kansas Board of Regents will continue until a successor is duly appointed.

#### Section 4.4 Resignation and Removal.

(a) Any Director may resign at any time by giving written notice to the Chairperson and/or the Secretary of the Authority. The resignation shall take effect on the date such notice is received or on any later date specified in the notice, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Any Director, other than a non-voting Director, may be removed by an affirmative vote of six (6) Directors for malfeasance or misfeasance in office, failure to regularly attend meetings, or for any cause which renders said Director incapable of or unfit to discharge the duties of a Director. Non-voting Directors appointed by the Board of Regents serve at the pleasure of the Board of Regents.

Section 4.5 Vacancies. When a vacancy occurs or is announced regarding a Director or Directors representing the general public due to death, removal, resignation or any other reason, or when a Director's term is set to expire, the Nominating and Governance Committee of the Board, after receiving input from the Board and conferring with the Board, shall act in an advisory role to the applicable selecting person, by assembling a slate of not less than two (2) nor more than three (3) persons for each applicable vacancy. The Nominating and Governance Committee shall forward the slate to the applicable selecting person (e.g. if a vacancy results from the resignation of a Director appointed by the Senate Minority Leader, the slate will be sent to the then current Senate Minority Leader) for consideration. When a vacancy occurs because a

director's term is set to expire, and the director is eligible to serve another term, the Nominating and Governance Committee may recommend that person for another term to the applicable selecting person without assembling a slate of additional persons. If the vacancy on the Board results in a sufficient number of Kansas residents not being represented on the Board as required by the Act and Section 4.2(a) of these Bylaws, the slate of candidates shall include only residents of the State of Kansas. The applicable selecting person may take the recommendations of the Nominating and Governance Committee into consideration, but the slate proposed by such committee shall not be binding. The applicable selecting person may appoint one Director from the slate or disregard such slate and select a candidate of his or her own choosing, in such person's sole discretion, and shall forward each appointment to the Senate for confirmation as provided in K.S.A. 75-4315b and amendments thereto. In case of a vacancy when the Senate is not in session, the selecting person may make a temporary appointment to the Board until the next meeting of the Senate. Any person who is temporarily appointed to the Board shall have all of the powers, duties, and functions as a Director during such temporary appointment.

Section 4.6 Meetings of Directors. Except as otherwise provided by the Act or these Bylaws, the Board may hold its meetings within or without the State of Kansas.

(a) Number of Meetings. The Board shall meet no less than four (4) times each fiscal year.

(b) Annual Meeting. There shall be an annual meeting of Directors for receiving the annual reports of officers, committees and task forces, electing officers, and the transaction of such other business as may properly be brought before the meeting. The date, time, and place of the annual meeting of Directors shall be established by resolution of the Board or, in the absence of such a resolution, by the Chairperson.

(c) Regular Meetings. Regular meetings of the Board may be held at such times and places as adopted by written consent of all Directors. Any business may be transacted at any regular meeting.

(d) Special Meetings. Special meetings may be held upon call by the President or the Chairperson, or upon written request of a majority of the Directors, or at such other times as the Board deems appropriate. Special meetings shall be held at the place, day and hour specified in the written notice of the meeting which notice shall also state the purpose(s) thereof.

Section 4.7 Executive Session. The Board may adjourn to executive session if, in the Board's opinion, the competitive position of the Authority would be harmed upon disclosure of:

(a) Plans that could affect the value of real or personal property that is owned or desirable for ownership by the Authority;

(b) The condition, acquisition, use or disposition of real or personal property; or

(c) Contracts for bioscience research, bioscience product manufacturing or commercialization construction and renovation of bioscience facilities and marketing or operational strategies.

Notwithstanding the foregoing, no action may be taken in such executive session. Further, notwithstanding any provision of these Bylaws to the contrary, the Authority may claim the benefit of any exception to the Kansas Open Meetings Act listed in K.S.A. 75-4317 *et seq.*, amendments thereto, and any successor statute.

Section 4.8 Notice. Meetings shall be held at the place, day and hour specified in the written notice of the meeting which notice shall also state the purpose(s) thereof. Such notice shall be mailed to each Director at the Director's residence or usual place of business at least three (3) days before the day on which the meeting is to be held, or shall be sent to the Directors by confirmed facsimile transmission, or delivered personally to the Directors, at least two (2) days before the day on which the meeting is to be held. If mailed, such notice shall be deemed to be delivered when it is deposited in the United States mail with postage thereon addressed to the Director at the Director's residence or usual place of business. If given by facsimile transmission, such notice shall be deemed to be delivered when sent. The notice may be given by any person having Authority to call the meeting. "Notice" and "call" with respect to such meetings shall be deemed to be synonymous.

Section 4.9 Waiver of Notice. Whenever any notice is required to be given to any Director under any law or these Bylaws, a written waiver thereof, signed by the Director entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors need be specified in any written waiver of notice unless so required by these Bylaws.

Section 4.10 Quorum. A majority of the total voting Directors shall constitute a quorum for meetings, and, except as otherwise set forth in the Bylaws or the Act, the Board may act by a majority of those Directors at any meeting where a quorum is present.

Section 4.11 Voting. Other than the non-voting Directors who have no vote, each Director shall be entitled to one (1) vote on any matter before the Board and no Director may vote or act by proxy at any meeting of the Board.

Section 4.12 Compensation. Directors shall serve without compensation. Directors attending meetings of the Board, or attending a committee or subcommittee meeting thereof authorized by the Board, shall be paid mileage and all other applicable expenses, provided such expenses are consistent with policies established from time-to-time by the Board and Section 9.2 of the Bylaws.

Section 4.13 Meetings of the Board by Conference Telephone or Similar Communications Equipment. Unless otherwise restricted by these Bylaws and unless violative of the Kansas Open Meetings Act, as such may be modified by Section 4.7 of these Bylaws, the Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear

each other, and participation in a meeting in such manner shall constitute presence in person at such meeting.

## ARTICLE V

### OFFICERS AND AGENTS

#### Section 5.1 Number, Appointment and Election of Officers.

(a) The Board shall annually elect one (1) of their voting Directors as Chairperson and at least one (1) other voting Director as Vice-Chairperson.

(b) The Board shall elect a voting Director as the Secretary and a voting Director as the Treasurer of the Board for terms determined by the Board. At the Board's discretion, the same voting Director may serve as both Secretary and Treasurer of the Board.

(c) The Board shall appoint a president to serve as chief executive officer of the Authority who shall serve at the pleasure of the Board, consistent with any rights or obligations under any existing written contract of employment. Unless appointed to the Board pursuant to Section 4.2 of these Bylaws, as amended, the President shall not be a Director.

(d) The Board may elect such vice-presidents, assistant treasurers, assistant secretaries or other officers as the Board determines necessary or appropriate. Such officers of the Authority need not be Directors of the Board.

Section 5.2 Resignation and Removal. Any officer of the Board or Authority may resign at any time, consistent with any rights or obligations under any existing written contract of employment between the officer and the Authority, by giving written notice to the Chairperson or the Secretary of the Board. An officer's resignation shall take effect at the time specified in the notice and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The Board may remove an officer from office at any time, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5.3 Officer Vacancies. The Board may fill a vacancy in any office, however occurring, for the unexpired portion of the term.

Section 5.4 Authority and Duties of Officers. The officers of the Authority shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the Chairperson or the Board except that in any event, the officers shall exercise such powers and perform such duties as may be required by law.

(a) Chairperson. The Chairperson shall be elected annually from among the voting Directors and shall be the presiding officer of the Board. The Chairperson shall preside at all meetings of the Board and the Executive Committee, and, as such, shall have the power, subject to the requirements of these Bylaws, to modify the order of business. The Chairperson shall appoint the members of all standing committees

(except the Executive Committee) and shall appoint the members of special committees. The Chairperson shall act as spokesperson or representative of the Board and shall perform such additional duties as may be directed by statute or by the Board. The Chairperson shall work closely with the other Directors and the President of the Authority in developing the agenda for Board meetings and submitting reports and other communications to the Board.

(b) Vice-Chairperson. The Vice-Chairperson shall be elected annually from among the voting Directors of the Board. The Vice-Chairperson shall also be a member of the Executive Committee. The Vice-Chairperson shall preside at all meetings of the Board and the Executive Committee in the absence of the Chairperson.

(c) President and Chief Executive Officer. Consistent with any rights or obligations under any existing written contract of employment between the President and the Authority, the President shall serve at the pleasure of the Board. The President's powers and responsibilities are set forth in Article VII of these Bylaws.

(d) Secretary of the Board.

(1) The Secretary of the Board shall have the general duties, powers and responsibilities of a Secretary of a board of directors and shall perform such other duties and have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board or Chairperson. The Secretary shall also be a member of the Executive Committee.

(2) The Secretary shall deliver all notices of Board meetings and make sure such notices are duly given in accordance with the provisions of these Bylaws or as required by law.

(3) The Secretary shall attend all meetings of the Board and shall record the minutes of such meetings in a book to be kept for that purpose. The Secretary shall perform similar duties for each standing or temporary committee when requested by the Board or such committee.

(4) The Secretary shall keep in safe custody the seal of the Authority, if any, and shall have the power to affix the seal to any instrument requiring a seal and, when so affixed, the Secretary may attest the seal by signature. The Board of Directors may give or these Bylaws may provide for general authority to any other officer to affix the seal of the Authority and to attest the seal by signature.

(5) In the absence or disability of the Secretary or in the event of the inability or refusal of the Secretary to act, the Secretary of the Authority or any Assistant Secretary of the Authority or other elected officer may perform the duties and exercise the powers of the Secretary of the Board (other than any committee votes) until the Board otherwise provides.

(e) Treasurer of the Board.

(1) The Treasurer of the Board shall have responsibility for the safekeeping of the funds and securities of the Board, shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Board and shall keep or cause to be kept all other books of account and accounting records of the Authority.

(2) The Treasurer of the Board shall disburse, or permit to be disbursed, the funds of the Authority as may be ordered, or authorized generally, by the Board, and shall render to the President of the Authority and the Directors, whenever they may require, an account of all such transactions as Treasurer, and of those under the Treasurer's jurisdiction, and of the financial condition of the Authority.

(3) The Treasurer shall perform such other duties and shall have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board.

(4) The Treasurer shall have the general duties, powers, responsibilities and authorities of a Treasurer of a corporation and shall, unless otherwise provided by the Board, be the chief financial and accounting officer of the Authority.

(5) If required by the Board, the Treasurer shall give the Authority a bond in a sum and with one or more sureties satisfactory to the Board for the faithful performance of the duties of the Treasurer and for the restoration to the Authority, in the case of such Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under his control which belong to the Authority.

(6) In the absence or disability of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer or other officer may perform the duties and exercise the powers of the Treasurer until the Board otherwise provides. Assistant Treasurers shall perform such other duties and have such other Authority as the Board may from time to time prescribe.

(f) Assistant Secretaries and Assistant Treasurers. Any Assistant Secretaries and Assistant Treasurers elected by the Board shall perform such duties as shall be assigned to them by the Secretary or the Treasurer respectively, or by the Chairperson of the Board, or the Board, and may, if authorized by the Board, perform any of the duties of the Secretary, or the Treasurer, respectively. Such officers need not be Directors of the Board.

Section 5.5 Agents. The Board may appoint and empower such agents of the Authority as the Board may deem necessary or desirable consistent with the requirements of the Act.

## **ARTICLE VI**

### **COMMITTEES OF THE BOARD**

Section 6.1 Committees. The Board shall establish an Executive Committee, Nominating and Governance Committee and such other standing or special committees or task forces as the Board determines to be necessary or appropriate. The Board shall prescribe the duties and powers of each committee and the Executive Committee may exercise all such powers and duties of the Board as the Board may delegate in these Bylaws or otherwise.

Section 6.2 Executive Committee. Pursuant to the Act, an Executive Committee consisting of the Chairperson, Vice-Chairperson(s), Secretary of the Board and two (2) additional voting Directors chosen by the Chairperson, shall be formed. The Chairperson, with respect to the two additional voting Directors, shall be responsible for filling such vacancies on the Executive Committee. Between meetings of the Board of Directors, the Executive Committee shall possess and may exercise any and all powers of the Board of Directors in the management and affairs of the Authority; provided that all actions of the Executive Committee shall be subject to the paramount power of the Board of Directors and shall not conflict with any expressed policies of the Board of Directors. All action taken by the Executive Committee shall be subject to revision, alteration or change by the Board of Directors, provided that rights of third persons shall not be affected thereby.

Section 6.3 Nominating and Governance Committee. A Nominating and Governance Committee of three (3) or more Directors shall be appointed by the Chairperson of the Board. The Chairperson of the Board shall designate a chairperson of such Nominating and Governance Committee. The Chairperson of the Board shall be solely responsible for filling all vacancies on the Nominating and Governance Committee. Each Committee member will be appointed for a one (1)-year term, and will hold office until a successor is elected and qualified or until such director's earlier death, resignation or removal.

The Committee will assist the Board in fulfilling its responsibilities by recommending key policies related to the Authority's governance and organization, including (1) determining, recommending, or approving governance processes and the organizational structure most appropriate for enabling the Authority to achieve its mission; (2) conducting periodic reviews of the Authority's Bylaws and Charters of all Board Committees and recommending amendments and revisions to the Bylaws and Charters as may be necessary for the Authority to achieve its mission; (3) conducting orientation for new directors; (4) developing and maintaining a program of continuing education for directors and officers; (5) conducting periodic self-assessment programs for the Board of Directors of the Authority; and (6) serving as the Authority's nominating committee to nominate candidates for appointment to the Board of Directors pursuant to the Act and Section 4.2 above. The Committee shall meet no less than annually to review and nominate the candidates for the Board's consideration at its annual meeting in connection with the election of officers. The Committee shall meet at other times as necessary or appropriate to identify and suggest candidates to fill a vacancy on the Board. As set forth in Section 4.5 of these Bylaws, whenever a vacancy on the Board occurs or a Director's term is set to expire, the Committee shall, with respect to each applicable vacancy and after having received input from the Board and conferring with the Board, assemble a slate of not less than two (2) nor more than three (3) suggested persons for each applicable vacancy and shall forward the slate of suggested candidates to the applicable selecting person. If the vacancy on the Board or

expiration of a Director's term results in an insufficient number of Kansas residents being represented on the Board as required by the Act and Section 4.2(a) of these Bylaws, the slate of suggested candidates shall include persons from the state of Kansas. The Committee shall consult with and take into consideration any input or comments received from any Directors or other persons, which the Committee believes would be helpful to its deliberations for the express purpose of obtaining candidates to be nominated for election to the Board of Directors.

Section 6.4 Committee Membership. Other than the Executive Committee, all other committee members or task force members and the chair of each such committee shall be appointed by the Chairperson of the Board upon creation of such committee or at the annual meeting for a term of one (1) year or until a successor is chosen by the Chairperson. Each such committee shall consist of a minimum of three (3) Directors, and any other persons as deemed appropriate by the Chairperson. The Chairperson of the Board shall be an ex officio member of all such committees, shall be counted for purposes of a quorum, and shall have the power to vote. Membership is not limited by these Bylaws, but may be augmented at the discretion of the Chairperson of the Board with one or more current Directors of the Board. The Chairperson of the Board shall appoint individuals to fill vacancies for the unexpired portion of the term. In the absence of the chair of a committee, any member of the committee may be designated by the chair of the committee or, in the absence of such designation, by a majority vote of a quorum of the committee to chair a committee meeting.

Section 6.5 Voting. A quorum of any committee shall consist of a majority of the members of the committee. However, except for the Executive Committee, in the discretion of the chair of the committee, if appropriate for the issues to be decided by the committee, a quorum may be called if the chair and two (2) other members of such committee are present.

Section 6.6 Delegation to Committee. The delegation of authority to any committee shall not operate to relieve the Board or any Director from any responsibility imposed by law, and except as set forth in Sections 6.1 or 6.2 with respect to delegated duties of the Executive Committee, and Section 6.3 with respect to delegated duties of the Nominating and Governance Committee, each committee of the Board shall function to only provide recommendations to the Board for consideration and action as the Board may deem appropriate. Rules governing procedures for meetings of any Board committee shall be as established by the Board, or in the absence thereof, by the committee itself.

Section 6.7 Recordkeeping. All committees so appointed shall, unless otherwise provided by the Board, keep regular minutes of the transactions at their meetings and shall cause them to be recorded in books kept for that purpose in the office of the Authority and shall report the same to the Board at its next meeting. The Secretary or an Assistant Secretary of the Authority may act as Secretary of the committee if the committee or the Board so requests.

Section 6.8 Meetings by Conference Telephone or Similar Communications Equipment. Unless otherwise restricted by these Bylaws and unless violative of the Kansas Open Meetings Act, as such may be modified by Section 4.7 of these Bylaws, members of any committee may participate in a meeting of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting

can hear each other, and participation in a meeting in such manner shall constitute presence in person at such meeting.

## **ARTICLE VII**

### **ADMINISTRATIVE STAFF**

Section 7.1 President Appointment, Powers, and Responsibilities. The President of the Authority shall be and serve as the chief executive officer of the Authority. The President shall direct and supervise administrative affairs and the general management of the Authority. The President shall, subject to the direction and supervision of the Board: (1) have general and active control of the Authority's affairs and business; (2) have general and active supervision of its officers, administrators, agents and employees; (3) see that all orders, policies and resolutions of the Board are carried into effect; and (4) perform all other duties incident to the office of President or as may from time to time be assigned to him/her by the Board, including without limitation the approval and execution of contracts.

Section 7.2 Qualifications. The President shall be a person who in the judgment of the Board has the combination of education, experience, professional standards and demonstrated leadership ability to fulfill successfully the responsibility of the position and to command the confidence and respect of the Board, bioscience community and the community at large.

Section 7.3 Responsibilities. The President shall facilitate advice and input from members of the administration and the bioscience community as needed for the Board to fulfill its responsibilities.

## **ARTICLE VIII**

### **AFFILIATED ORGANIZATIONS**

The Authority may create, own in whole or in part, or otherwise acquire or dispose of any entity organized for a purpose related to or in support of the mission of the Authority, and may participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any activities or programs consistent with the public purpose and intent of the Act. Such creation, ownership, acquisition, participation, or affiliation shall require the approval of the Board or its Executive Committee. The Board shall approve any such affiliated organization's bylaws or other organizational documents and changes thereto. The President of the Authority or his/her designee shall function as a liaison and coordinator with the affiliated organization to ensure that its operations are consistent with and support the mission, goals, and activities of the Authority. As approved, affiliated organizations shall provide such reports and information about its operations, activities, and financial condition as may be requested by the Board, the Chairperson, or the President of the Authority, or their designee(s).

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.1 Conflict of Interest; Disclosure. Any Director and any employee, other agent or advisor of the Authority, who has a direct or indirect interest in any contract or transaction with the Authority, shall disclose this interest to the Authority in writing. This interest shall be set forth in the minutes of the Authority, and no Director, employee or other agent or advisor having such interest shall participate on behalf of the Authority in the authorization of any such contract or transaction. All Directors of the Board shall file a written statement pursuant to K.S.A. 46-247 *et seq.* and amendments thereto regarding any substantial interests within the meaning of K.S.A. 46-229 and amendments thereto that each Director may hold.

Section 9.2 No Private Inurement. No part of the funds of the Authority shall inure to the benefit of, or be distributed to, its employees, officers or Directors of the Board, except that the Authority may make reasonable payments for expenses incurred on its behalf relating to any of its lawful purposes, including, without limitation, reimbursement for expenses as specified in Section 4.12 of the Bylaws. The Authority shall be authorized and empowered to pay reasonable compensation for services rendered to or for its benefit relating to any of its lawful purposes, including to pay its employees reasonable compensation.

Section 9.3 Fiscal Year. The fiscal year of the Authority shall begin on July 1 and end on June 30 of each year.

Section 9.4 Corporate Seal. The Board may, by resolution, adopt and alter as necessary an official seal in such form as it deems appropriate.

Section 9.5 Construction of Terms and Headings. Words used in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the actual context requires. The captions or heading in these Bylaws are for convenience only and are not intended to omit or define the scope or effect of any provision.

Section 9.6 Account Books, Records and Minutes.

(a) The Authority shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board and Board committees and task forces.

(b) All resolutions and orders of the Board shall be recorded and authenticated by the signature of the Secretary or any Assistant Secretary of the Board. The book of resolutions, orders, minutes of open meetings, annual reports and annual financial statements of the Authority shall be public records as defined in K.S.A. 45-215 *et seq.* and amendments thereto. All public records shall be subject to regular audit as provided in K.S.A. 46-1106 and amendments thereto.

(c) Notwithstanding any provision of K.S.A. 45-215 *et seq.* and amendments thereto to the contrary, the following records of the Authority shall not be subject to the

provisions of the Kansas Open Records Act when in the opinion of the Board the disclosure of the information in the records would be harmful to the competitive position of the Authority:

- (1) Proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality;
- (2) Contract cost estimates prepared for confidential use in awarding contracts for research development, construction, renovation, commercialization or the purchase of goods or services; and
- (3) Data, records or information of a proprietary nature produced or collected by or for the Authority, its employees, officers or Directors; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

Notwithstanding any provision of this section to the contrary, the Authority may claim the benefit of any other exemption to the Kansas Open Records Act listed in K.S.A. 45-215 *et seq.* and amendments thereto.

Section 9.7 Contributions. The Authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust, which entity or entities shall not engage in trust business.

Section 9.8 Self-Evaluation. The Board shall review its performance at least once every fiscal year. This process will include an evaluation of how the Board helps to fulfill the Authority's vision, mission, and values and any other aspects of the Board's performance as it determines to be appropriate. Based on the findings of this self-evaluation, the Board shall develop and implement appropriate plans for improvements in its activities.

Section 9.9 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, invalid, illegal, or otherwise ineffective shall not affect or invalidate any other provision of these Bylaws.

## **ARTICLE X**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 10.1 Kansas Tort Claims Act. The Authority is covered by and subject to the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, and amendments thereto.

Section 10.2 Limitation of Liability. Except as prohibited by law, no person shall be liable to the Authority for any loss, damage, liability or expense suffered by the Authority on

account of any action taken or omitted to be taken by such person as a Director or officer of the Authority, if such person (a) exercised the same degree of care and skill as a prudent person would have exercised under the circumstances in the conduct of his or her own affairs, or (b) took or omitted to take such action in reliance upon advice of counsel for the Authority, or upon statements made or information furnished by Directors, officers, employees or agents of the Authority, which such person had no reasonable grounds to disbelieve.

Section 10.3 Indemnification Generally. In addition to and without limiting the rights to indemnification and advancement of expenses specifically provided for in the other sections of this Article X, the Authority shall indemnify and advance expenses to each person who is or was a Director or officer of the Authority, to the full extent permitted by the laws of the State of Kansas as in effect on the date of the adoption of these Bylaws and as may hereafter be amended.

Section 10.4 Indemnification in Actions by Third Parties. Except as prohibited by law, the Authority shall indemnify each person who has been or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, other than an action by or in the right of the Authority, by reason of the fact that such person is or was a Director or officer of the Authority, against all liabilities and expenses, including, without limitation, judgments, fines, amounts paid in settlement (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Authority using the procedures set forth in Section 10.6 of these Bylaws, which approval shall not be unreasonably withheld or delayed), attorneys' fees, ERISA excise taxes or penalties, and other expenses actually and reasonably incurred by such person in connection with such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; provided, however, that the Authority shall not be required to indemnify or advance expenses to any such person or persons seeking indemnification or advancement of expenses in connection with an action, suit or proceeding initiated by such person or persons (including, without limitation, any crossclaim or counterclaim initiated by such person or persons) unless the initiation of such action, suit or proceeding was authorized by the Board. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or under a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that such person's conduct was unlawful.

Section 10.5 Indemnification for Expenses. Notwithstanding the other provisions of this Article X, to the extent a person who is or was serving as a Director or officer of the Authority has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.4 of these Bylaws (including the dismissal of any such action, suit or proceeding without prejudice), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 10.6 Determination of Right to Indemnification. Prior to indemnifying a person pursuant to the provisions of Sections 10.3 and 10.4 of these Bylaws, unless ordered by a court and except as otherwise provided by Section 10.5 of these Bylaws, the Authority shall determine that such person has met the specified standard of conduct entitling such person to indemnification as set forth under Sections 10.3 and 10.4 of these Bylaws. Any determination that a person shall or shall not be indemnified under the provisions of Sections 10.3 and 10.4 of these Bylaws shall be made (a) by the Board by a majority vote of a quorum consisting of Directors who were not parties to the action, suit or proceeding, or (b) if such quorum is not obtainable, or even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, and such determination shall be final and binding upon the Authority; provided, however, that in the event such determination is adverse to the person or persons to be indemnified hereunder, such person or persons shall have the right to maintain an action in any court of competent jurisdiction against the Authority to determine whether or not such person has met the requisite standard of conduct and is entitled to such indemnification hereunder. If such court action is successful and the person or persons is determined to be entitled to such indemnification, such person or persons shall be reimbursed by the Authority for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with any such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

Section 10.7 Advancement of Expenses. Expenses (including attorneys' fees) actually and reasonably incurred by a person who may be entitled to indemnification hereunder in defending an action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, shall be paid by the Authority in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to indemnification by the Authority. Notwithstanding the foregoing, no advance shall be made by the Authority if a determination is reasonably and promptly made by (a) the Board by a majority vote of a quorum consisting of Directors who were not parties to the action, suit or proceeding for which the advancement is requested, or (b) if a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that, based upon the facts known to the Board or independent legal counsel at the time such determination is made, such person acted in bad faith and in a manner that such person did not believe to be in or not opposed to the best interests of the Authority, or, with respect to any criminal proceeding, that such person believed or had reasonable cause to believe such person's conduct was unlawful. In no event shall any advancement of expenses be made in instances where the Board or independent legal counsel reasonably determines that such person intentionally breached such person's duty to the Authority.

Section 10.8 Non-Exclusivity. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, these Bylaws, agreement of disinterested Directors, policy of insurance or otherwise, both as to action in their official capacity and as to action in another capacity while holding their respective offices, and shall not limit in any way any right which the Authority may have to make additional indemnifications with respect to the same or different persons or classes of persons. The indemnification and advancement of expenses provided by, or granted pursuant to,

this Article X shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, administrators and estate of such a person.

Section 10.9 Insurance. The Authority may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Authority, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Authority would have the power to indemnify such person against such liability under this Article X.

Section 10.10 Vesting of Rights. The rights granted by this Article X shall be vested in each person entitled to indemnification hereunder as a bargained-for, contractual condition of such person's acceptance of such person's election or appointment as a Director or officer of the Authority and while this Article X may be amended or repealed, no such amendment or repeal shall release, terminate, or adversely affect the rights of such person under this Article X with respect to any act taken or the failure to take any act by such person prior to such amendment or repeal or with respect to any action, suit or proceeding with respect to such act or failure to act filed after such amendment or repeal.

Section 10.11 Severability. If any provision of this Article X or the application of any such provision to any person or circumstance is held invalid, illegal or unenforceable for any reason whatsoever, the remaining provisions of this Article X and the application of such provisions to other persons or circumstances shall not be affected thereby and, to the fullest extent possible, the court finding such provision invalid, illegal or unenforceable shall modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to persons subject to indemnification hereby within the bounds of validity, legality and enforceability. Without limiting the generality of the foregoing, if any Director or officer of the Authority is entitled under any provision of this Article X to indemnification by the Authority for some or a portion of the judgments, amounts paid in settlement, attorneys' fees, ERISA excise taxes or penalties, fines or other expenses actually and reasonably incurred by any such person in connection with any threatened, pending or completed action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding), whether civil, criminal, administrative, investigative or appellate, but not, however, for all of the total amount thereof, the Authority shall nevertheless indemnify such person for the portion thereof to which such person is entitled.

## **ARTICLE XI**

### **AMENDMENTS TO BYLAWS**

These Bylaws may be amended or repealed and new Bylaws adopted by the Board, consistent with the provisions of the Act, as the Board deems expedient for its own governance and for the governance and management of the Authority. The Executive Committee of the Board shall review these Bylaws at least once a year and either recommend changes or state that no changes are required, and the report and recommendations of the Executive Committee shall be submitted to the Board for information and/or approval at the annual meeting. The Executive Committee of the Board may recommend interim changes for Board approval as necessary.