

RESOLUTION

CREATION OF A 501(c)(3) CORPORATION FOR THE DEVELOPMENT AND SUPPORT OF RESEARCH AND COMMERCIALIZATION AT USA

WHEREAS, the University of South Alabama is a comprehensive research university that promotes research, industry collaboration and technology commercialization, for the benefit of the region and the nation, and

WHEREAS, the University created the USA Research and Technology Corporation (“USARTC”) in 2002 with one of its purposes being the creation of a research park, which it did as the USA Technology & Research Park (“USATRP”), and,

WHEREAS, the University seeks to utilize the USARTC as the corporate oversight body of the USATRP, which will include the handling of all real estate transactions within USARTC thus furthering development and promotion of beneficial and productive relationships with industry, higher education, and the local community, and

WHEREAS, a corporation organized exclusively for charitable, educational, and scientific purposes within the meaning of 501(c)(3) of the Internal Revenue code of 1986 and the regulations promulgated thereunder has been determined by the University to be the best vehicle for centralizing the development, support, and operation of certain research and commercialization efforts of the entire University, and

WHEREAS, the University believes it is important to centralize certain research and commercialization efforts of the entire institution into one 501(c)(3) not for profit corporation created as a supporting organization of the University of South Alabama to further its educational, research, and service missions, to promote the University and its colleges and departments, to promote collaboration of the University with Industry, and to seek and accept gifts, create endowments, and invest same in furtherance of research, technology, and commercialization consistent with the mission of the University and the Articles of Incorporation of said 501(c)(3) corporation, a draft of which is attached hereto,

THEREFORE, BE IT RESOLVED, the Board of Trustees of the University of South Alabama hereby authorizes the University President to proceed with the creation of a 501(c)(3) corporation as a supporting organization of the University as described herein above, and

BE IT FURTHER RESOLVED that the Board of Trustees of the University of South Alabama hereby approves the Articles of Incorporation and the Bylaws of the above-referenced 501(c)(3) corporation to be known as the University of South Alabama Foundation for Research and Commercialization.



MEMORANDUM

University of South Alabama
Office of the Vice President for Research
and Economic Development

AD 200 • Mobile, AL 36688-0002

Telephone (251) 460-6333 Fax (251) 460-7955

May 24, 2013

REC'D
OFFICE OF THE PRESIDENT

MAY 24 2013

TO: Dr. John W. Smith
Acting President

UNIVERSITY OF SOUTH ALABAMA

FROM: Lynne Chronister 
Vice President for Research and Economic Development

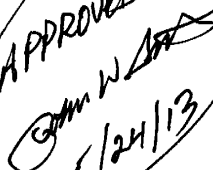
SUBJECT: Agenda Item for the June 7, 2013 University of South Alabama Board of
Trustee's Meeting: Establishment of the USA Foundation for Research and
Commercialization

Attached is a resolution for consideration by the Board of Trustees of the University of South Alabama requesting support creation of the USA Foundation for Research and Commercialization to further expand the University's education, research and service missions. The Foundation will promote productive relationships with industry and further enhance the development of new industries that will enhance the economic growth and stability of the region.

With your approval, the item will be presented to the Board of Trustees. I recommend adoption by the Board of Trustees.

SSC

Attachments (2)

APPROVED

5/24/13

DRAFT

**ARTICLES OF INCORPORATION
OF
UNIVERSITY OF SOUTH ALABAMA FOUNDATION
FOR
RESEARCH AND COMMERCIALIZATION**

For the purpose of forming a nonprofit corporation under the Alabama Business and Nonprofit Entity Code (Sections 10A-1-1.01 et seq., Code of Alabama (1975)) and the Alabama Nonprofit Corporation Law (Sections 10A-3-1.01 et seq., Code of Alabama (1975)), and any acts or laws amendatory thereof, supplementary thereto or substituted therefor (collectively hereinafter referred to as the "Nonprofit Corporation Law"), the undersigned organizer does hereby adopt, execute and verify these Articles of Incorporation, and, upon the filing for record of these Articles of Incorporation in the Office of the Judge of Probate of Mobile County, Alabama, the existence of a nonprofit corporation under the name set forth in Article I hereof shall commence.

**ARTICLE I
NAME**

The name of the filing entity being formed is University of South Alabama Foundation for Research and Commercialization, hereinafter referred to as the "USAFRC."

**ARTICLE II
TYPE OF FILING ENTITY**

The type of filing entity being formed is a nonprofit corporation within the meaning of Section 10A-3-1.02(6) of the Alabama Nonprofit Corporation Law.

**ARTICLE III
PURPOSES**

The objects and purposes for which the USAFRC is formed, and the powers which it may exercise in furtherance thereof, are as follows:

(a) The USAFRC is organized exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder, as they now exist or as they may hereafter be amended from time to time (the "Code"), and to promote and advance such purposes by any activity in which a corporation organized under the Nonprofit Corporation Law may engage, either directly or by contributions to organizations qualifying as exempt organizations under Section 501(c)(3) of the Code, and to receive and maintain a fund or funds of real or personal property, or both, and to administer and apply the income and principal thereof, within the United States of America, for such purposes.

(b) Without in any way limiting the foregoing statement of purposes, the USAFRC is organized and shall be operated exclusively as a "supporting organization" within the meaning of Section 1.509(a)-4 of the Treasury Regulations for the benefit of and to further the purposes of the University of South Alabama (the "University") as follows:

(i) To further the University's educational, research, and service missions by supporting its academic programs, scientific research and development initiatives, and other related activities and to enhance the educational and training opportunities available to its students and faculty;

(ii) To promote the University and its colleges, schools and departments and to assist them in the development and improvement of curricula, academic programs and physical facilities for the benefit of the University's students and faculty and the attainment of greater educational opportunities and a more comprehensive learning experience;

(iii) To further the development of infrastructure and services in the Mobile, Alabama area to attract technology enterprises to the local community which can offer students and faculty a practical, hands-on learning experience and enhance the educational and professional opportunities available to them;

(iv) To promote the development, growth and retention of technology industries and research in Alabama that will provide professional and career opportunities attractive to the University's students and faculty and serve as an inducement for them to remain in Alabama;

(v) To advance the scientific education and training of the University's students and to promote scientific research and development in the State of Alabama;

(vi) To attract nationally prominent scientists, researchers and faculty to the University;

(vii) To provide fellowship and internship opportunities for the University's students and faculty in the scientific research and technology areas;

(ix) To further the University's scientific research and development activities and to facilitate the efficient transfer and utilization of University developed technology, patents, processes, copyrights, formulae and other know-how for the maximum public benefit;

(x) To further the University's efforts to publish and disseminate the results of scientific research and development conducted by its students and faculty; and

(xi) To solicit, accept, invest and administer gifts, funds, property and assets of any kind, quality or value for the benefit and to further the charitable purposes of the Corporation, and in connection therewith, to establish and manage accounts, deposits,

endowments and other vehicles for holding and managing the property and assets of the USAFRC.

(c) The USAFRC shall possess and may exercise all the powers and privileges vested in a nonprofit corporation by the Nonprofit Corporation Law or by any other law of the State of Alabama, together with all powers necessary or convenient to the conduct, promotion or attainment of the activities or purposes for which the USAFRC is organized; provided, that the activities conducted by the USAFRC shall be subject to any restrictions set forth in these Articles of Incorporation and the USAFRC shall not conduct or carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Code Section 501(c)(3) and described in Code Section 509(a)(3) or by an organization, contributions to which are deductible under Code Section 170(c)(2).

(d) The foregoing clauses of this Article III shall be construed equally as objects, purposes and powers and the foregoing enumeration of specific objects, purposes or powers shall not be construed or held to limit or restrict in any manner the powers of the USAFRC expressly conferred by law, except as expressly stated herein.

ARTICLE IV REGISTERED OFFICE

The street address of the initial registered office of the USAFRC is [Office of the University Attorney, 307 University Boulevard North, Rm 140, Mobile, Alabama 36688]. The name of the initial registered agent of the USAFRC at its registered office is [Jean Walker Tucker].

ARTICLE V ORGANIZER

The name and address of the sole organizer of the USAFRC are [Jean Walker Tucker] and [307 University Boulevard North, Rm 140, Mobile, Alabama 36688], respectively.

ARTICLE VI MEMBERS

The USAFRC shall have no members or shareholders and shall not issue any shares of stock or certificates or any evidence of membership.

ARTICLE VII DISSOLUTION

Upon the dissolution of the USAFRC and the winding up of its affairs, the assets of the USAFRC remaining after payment of all debts and liabilities of the USAFRC shall be distributed to the University or, at the direction of the Board of Trustees of the University, to an affiliate organization of the University, the State of Alabama or an agency or instrumentality thereof, or to one or more other organizations exempt from federal income tax under Code Section 501(c)(3).

**ARTICLE VIII
PROHIBITED ACTIVITIES**

Notwithstanding any other provision of these Articles of Incorporation, no part of the earnings of the USAFRC shall inure to the benefit of any director, officer or other person holding a position of influence with the USAFRC, or to any private individual (except that reasonable compensation may be paid for services rendered to or for the benefit of the USAFRC in connection with the accomplishment of one or more of its stated charitable purposes), and no director or officer of the USAFRC, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the USAFRC. No substantial part of the activities of the USAFRC shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the USAFRC 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 IX
BOARD OF DIRECTORS**

(a) The number of directors constituting the initial board of directors of the USAFRC shall be nine (9). The number of directors constituting the board of directors of the USAFRC thereafter shall be that number set forth in the bylaws of the USAFRC. The names and addresses of the persons who are to serve as directors until the first annual meeting of the directors or until their successors are elected and qualified are as follows:

<u>Director</u>	<u>Address</u>
_____	_____ _____
_____	_____ _____
_____	_____ _____
_____	_____ _____
_____	_____ _____

(b) The manner of electing directors, filling vacancies created by the resignation or removal of directors, and increasing or decreasing the number of directors constituting the board of directors is set forth in the bylaws of the USAFRC. A director may be removed from office at

any time, with or without cause, by the vote of a majority of the directors serving on the board of directors at the time such vote is taken.

ARTICLE X BYLAWS

The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors of the USAFRC subject to the approval of such alteration, amendment, repeal or adoption of new bylaws by the University of South Alabama Board of Trustees.

ARTICLE XI AMENDMENTS

These Articles of Incorporation may be amended from time to time in accordance with the terms and provisions of the Nonprofit Corporation Law. No amendment to these Articles of Incorporation shall be effective for any purpose, or filed in the public records, until the amendment has been approved by a majority of the Board of Trustees of the University. No amendment shall be made to these Articles of Incorporation which would in any way result in the operation of the USAFRC for the private advantage or pecuniary profit of any director or officer thereof or permit the operation of the USAFRC for any purpose other than the purposes described in Article III hereof.

ARTICLE XII INDEMNIFICATION OF DIRECTORS AND OFFICERS

In amplification and not in limitation of the provisions of applicable law:

(a) Pursuant to § 10A-20-16.01 et seq. and § 6-5-336 of the Code of Alabama, 1975, as amended, all non-compensated directors, officers and other volunteers of the USAFRC shall be immune from suit and shall not be subject to civil liability arising from the conduct of the affairs of the USAFRC except when the act or omission of such person that gives rise to the cause of action amounts to willful or wanton misconduct or fraud or gross negligence.

(b) The USAFRC shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the USAFRC), by reason of the fact that he or she is or was a director or officer of the USAFRC, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding, unless he or she acted intentionally or willfully against the best interests of the USAFRC. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person acted intentionally or willfully in a manner that was opposed to the best interests of the USAFRC.

(c) The USAFRC shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or

in the right of the USAFRC to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the USAFRC against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the USAFRC, and except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for intentional or willful misconduct in the performance of his or her duty to the USAFRC unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(d) Any indemnification under paragraphs (b) and (c) above (unless ordered by a court) shall be made by the USAFRC only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraphs (b) and (c) above. Such determination shall be made (i) by the board of directors of the USAFRC by a majority vote of the directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (ii) if a majority of disinterested directors so directs, by independent legal counsel.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the USAFRC in advance of the final disposition of such claim, action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if and to the extent that it shall ultimately be determined that he or she is not entitled to be indemnified by the USAFRC as authorized in this Article XII. Such undertaking shall be an unlimited, unsecured general obligation of the officer of the USAFRC and shall be accepted without reference to his or her ability to make repayment.

(f) The indemnification authorized by this Article XII shall not be deemed exclusive of and shall be in addition to any other rights to which those indemnified may be entitled under any statute, rule of law, provision of articles or certificate of incorporation, bylaws, agreement, vote of disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and 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 and administrators of such a person. No amendment, modification, or repeal of this Article XII shall diminish the right to indemnification with respect to any claim, cause, or matter in any then pending or subsequent proceeding that is based in any material respect on any alleged action or failure to act prior to such amendment, modification or repeal.

(g) The USAFRC shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the USAFRC, against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the USAFRC would have the power to indemnify him or her against such liability under the provisions of this Article XII.

(h) There shall be no personal or individual liability of any director or officer for any debts, liabilities or obligations of the USAFRC of any kind whatsoever.

IN WITNESS WHEREOF, the undersigned, acting as the sole organizer of the University of South Alabama Foundation for Research and Commercialization, has executed and caused to be filed these Articles of Incorporation on this ____ day of June, 2013.

Jean Walker Tucker, Organizer

This instrument prepared by:

K. Wood Herren
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104
(205) 521-8000

**BYLAWS OF THE
UNIVERSITY OF SOUTH ALABAMA FOUNDATION
FOR
RESEARCH AND COMMERCIALIZATION**

an Alabama nonprofit corporation

Adopted , 2013

BYLAWS OF THE
UNIVERSITY OF SOUTH ALABAMA
FOUNDATION FOR RESEARCH AND
COMMERCIALIZATION

ARTICLE I

Name and Location

Section 1.1 Name. The name of the corporation is University of South Alabama Foundation for Research and Commercialization, which shall be referred to in these Bylaws as the "USAFRC."

Section 1.2 Location. The principal office of the USAFRC is located at 307 University Boulevard, Mobile, Alabama, 36688. The USAFRC may have such other office or offices within the State of Alabama as the Board of Directors may determine or as the business or activities of the USAFRC may require. The registered office of the USAFRC may, but need not be, the same as its principal office. The address of the registered office may be changed from time to time by the Board of Directors of the USAFRC in the manner prescribed by the Alabama Nonprofit Corporation Act.

ARTICLE II

Purposes and Scope of Activity

Section 2.1 Purposes. The purposes of the USAFRC are as set forth in its Articles of Incorporation.

Section 2.2 Scope of Activity. The USAFRC shall be organized and operated exclusively for any one or more of the charitable purposes enumerated in Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time (the "Code"). The USAFRC shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code. No part of the net earnings of the USAFRC shall inure to the benefit of any private individual. No substantial part of the activities of the USAFRC shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the USAFRC 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 III

Board of Directors

Section 3.1 General Powers. The duly elected or appointed Board of Directors of the USAFRC (hereinafter referred to as the "Board") shall have control and management of the affairs, business, property, and funds of the USAFRC and shall have the authority to fashion and implement the policy, goals, and purposes of the USAFRC. The Board may adopt such rules and regulations for the conduct of its meetings and the management of the USAFRC as the Board may deem appropriate, not inconsistent with federal or state law or these Bylaws. The Board, by resolution thereof, shall from time to time enumerate the duties, obligations, and responsibilities of the directors, including their attendance at meetings of the Board and their participation in the activities of the USAFRC.

Section 3.2 Number, Qualification, and Tenure.

(a) The number of directors comprising the Board shall be the sum of (i) four (4) ex-officio directors (as described below) who are affiliated with the University of South Alabama (the "University") and (ii) five (5) directors who are not officers, employees, or trustees of the University. The ex-officio directors shall consist of those individuals holding the following positions at the University:

- (i) Chair *Pro Tempore* of the Board of Trustees of the University;
- (ii) President of the University;
- (iii) Vice President for Financial Affairs of the University; and
- (iv) Vice President for Research and Economic Development of the University.

(b) The Board of Trustees of the University shall elect five (5)-directors to serve on the Board from a slate presented by the Board of the USAFRC. These directors shall serve staggered terms as described in (c) below. The Board of Trustees of the University shall have the absolute right, in its sole discretion, to decline to elect any one or more of the director nominees included in the slate presented to it by the Board of the USAFRC and to request that a substitute slate be presented with different nominees. This process shall be repeated, if necessary, until the Board of Trustees of the University has selected directors to fill any directorships the term of which has expired or will expire at the next annual meeting of the Board.

(c) The term of office of the five (5) directors who are elected to serve on the Board in the manner described in (b) above shall be four consecutive years; provided, however, that at the meeting at which the adoption of these Bylaws took place, certain directors will be elected to serve a two (2) year term expiring in September, 2015, such that these four (4) directors serve staggered terms with two (2) of these directors' terms expiring in September 2015 and three (3) of these directors' terms expiring in September 2017. Thereafter, each term of the directors elected by the Board of Trustees of the University in accordance with (b) above shall expire four (4) years

after said director's appointment. Directors shall hold office until their successors have been duly elected and qualified or until their deaths or until they shall resign or shall have been removed from office in the manner provided in these Bylaws. Directors need not be residents of the State of Alabama.

Section 3.3 Resignation. Any director may resign at any time by giving written notice of such resignation to the Chair or Vice Chair of the Board and to the Chair Pro Tempore of the Board of Trustees of the University.

Section 3.4 Vacancies. In the event of a vacancy in the Board of Directors resulting from a vacancy of any of the positions at the University described in Section 3.2(a)(i) through (iii), the vacancy in the Board shall be filled at such time as the vacancy of such position at the University is filled; provided; however, that persons appointed as "acting" positions described in Section 3.2(a)(i) through (iii) shall serve on this Board consistent with said "acting" appointment at the University. In the event of a vacancy in the Board with respect to either of the four directors elected by the Board of Trustees of the University in accordance with Section 3.2(b) above, such vacancy shall be filled using the procedures set forth therein with the replacing board member serving the remainder of the term associated with the vacant position.

Section 3.5 Annual and Regular Meetings. A regular meeting of the Board, which shall be the annual meeting thereof, shall be held in September of each year, commencing in 2013, unless the Board shall determine to hold its annual meeting at some other time. At the annual meeting, the Board shall appoint the officers of the USAFRC for the coming year and shall transact such other business as shall come before the directors at such meeting. Additional regular meetings of the Board shall be held at such times and places as may be determined by the Chair or Vice Chair of the Board. There shall be at least two (2) regular meetings of the Board, including the annual meeting thereof, during each calendar year.

Section 3.6 Special Meetings. A special meeting of the Board may be called by the Chair or Vice Chair of the Board or the President, or upon written request of two directors.

Section 3.7 Notice of Meetings. Written notice stating the place, date, and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called and the name or names of the person or persons by whom or at whose direction the special meeting is called shall, except in extraordinary situations, be given each director not less than five (5) days before the date of any annual or regular meeting and not less than two (2) business days before the date of any special meeting, either personally, by mail, by facsimile or by electronic mail, by or at the direction of the Chair or the Vice Chair of the Board, the President, or the Secretary. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at such member's address as it appears in the records of the USAFRC, with postage thereon prepaid. If by facsimile or electronic mail, such notice shall be deemed to be delivered upon confirmation to the sender that such facsimile transmission or electronic mailing is complete. Each director shall be responsible for keeping the Secretary informed as to such director's proper

mailing address and e-mail address. A director may waive his or her right to notice of the annual or a special meeting.

Section 3.8 Meeting by Telephone. Members of the Board or any committee designated thereby may participate in a meeting of the Board or a committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 3.9 Quorum. The presence of a majority of the directors then serving on the Board at the annual or any regular or special meeting thereof shall constitute a quorum for the conduct of business. If less than a majority of the directors is present at a meeting of the Board, a majority of the directors present may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. Directors present at a duly organized meeting thereof may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 3.10 Chair and Vice Chair. At all meetings of the Board, the Chair, or in the absence of the Chair, the Vice Chair, or in the absence of both the Chair and the Vice Chair, an acting chair chosen by the directors, shall preside over the meeting.

Section 3.11 Acts of the Board. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 3.12 Action Without a Meeting. Any action required or permitted to be taken by the Board or a committee thereof at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote of the directors or the members of such committee.

Section 3.13 Conflicts of Interest. Each director shall notify and disclose to the Board any real, potential or perceived conflict of interest of such director with respect to any matter coming before the Board for a vote or action thereon. No director having a conflict of interest shall vote on such matter and no such director shall be counted for purposes of determining whether a quorum exists at a meeting when such matter is considered and acted upon by the Board.

Section 3.14 Removal. A director may be removed or suspended at any time with or without cause by a majority vote of the Board of Trustees of the University, acting in its sole and absolute discretion.

ARTICLE IV

Officers

Section 4.1 Positions and Terms of Office. The officers of the USAFRC shall consist of Chair and Vice Chair of the Board, President, one or more Vice Presidents, Secretary, Treasurer, and such other officers with such powers not inconsistent with these Bylaws as may be appointed by the Board. The Chair of the Board shall be the Chair *Pro Tempore* of the Board of Trustees of the University. The President of the USAFRC shall be the President of the University. Any two or more offices of the USAFRC, except those of the Chair and Vice Chair and the President and Secretary, may be held by the same person.

Section 4.2 Election and Term of Office. The Vice Chair shall be appointed by the Board from among its number. The officers of the USAFRC authorized herein shall be elected by the Board, except the Chair of the Board and the President of the USAFRC, and need not be members thereof at the time of their appointment. Unless otherwise determined by the Board, each officer, except the Chair of the Board and the President of the USAFRC, shall hold office for a three year term commencing with the date of such officer's appointment by the Board unless such officer is earlier removed from office by the Board in the manner hereinafter provided or until the death, retirement, resignation, or other event resulting in such officer ceasing to hold office. The Chair of the Board and President of the USAFRC shall remain as Chair of the Board and President of the USAFRC so long as each remains Chair *Pro Tempore* of the Board of Trustees of the University and President of the University respectively.

Section 4.3 Vacancies. In case any office of the USAFRC becomes vacant by death, resignation, retirement, disqualification, or any other cause, such vacancy shall be filled by the Board, and the officer so elected shall hold office and serve until the appointment and qualification of his or her successor, except that the Chair of the Board must be the person acting as Chair *Pro Tempore* of the Board of Trustees of the University and the President of the USAFRC must be the person acting as President of the University.

Section 4.4 Removal. Any officer, except the Chair of the Board and the President of the USAFRC, may be removed from office by the Board at any regular or special meeting called for that purpose.

Section 4.5 Duties of Officers. The officers of the USAFRC, if and when elected by the Board, shall have the following duties:

(a) Chair of the Board. The Chair of the Board, subject to the direction of the Board, shall supervise and control the business and affairs of the USAFRC. The Chair shall preside at all meetings of the Board and may call special meetings as provided herein. He/she shall serve as Chair of the Executive Committee, and shall appoint such committees as may be authorized by these Bylaws, or as he/she may deem desirable, fill vacancies which will occur on such committees, and give final approval to the agenda for the Board meeting. In general, the Chair shall perform all duties incident to the office of Chair of the Board and such other duties as may be prescribed by the Board.

(b) Vice Chair of the Board. At the request of the Chair, or in the absence of the Chair, the Vice Chair shall perform the duties and possess and exercise the powers of the Chair and, to the extent authorized by applicable law and these Bylaws, the Vice Chair shall have such other powers as the Board may determine, and shall perform such other duties as may be assigned to the Vice Chair by the Board;

(c) President. The President shall be the chief executive officer of the USAFRC and he/she shall serve as a member of the Executive Committee. He/she shall have in his or her charge the general and active management of its affairs and of such areas and divisions of the business of the USAFRC as may be designated by the Board. In the absence of the Chair and the Vice Chair or in the event of each their deaths or inability to act, the President shall perform the duties of the Chair and the Vice Chair, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair and the Vice Chair. With appropriate authorization by the Board, the President may sign deeds, mortgages, bonds, contracts or other instruments on behalf of the USAFRC except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the USAFRC. In general, the President shall perform all duties incident to the offices of President and Chief Executive Officer and such other duties as may be prescribed by the Board.

(d) Vice Presidents. In the absence of the President or in the event of the President's death or inability to act, the Vice President (or in the event there be more than one vice president, the Vice Presidents in the order determined by the Board) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such duties as from time to time may be assigned to him/her by the Chair, the President or the Board.

(e) Secretary. The Secretary shall keep the minutes of the proceedings of the Board and any committees appointed by the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the USAFRC; see that the seal of the USAFRC is affixed to all documents, the execution of which on behalf of the USAFRC under its seal is duly authorized; keep a register of the post office address of each member which shall be furnished to the Secretary by such member: and in general perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Chair, the President or the Board. If there is no Treasurer of the USAFRC, the Secretary shall assume the authority and duties of Treasurer.

(f) Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the USAFRC, receive and give receipts for moneys due and payable to the USAFRC from any source whatsoever, and deposit all such moneys in the name of the USAFRC in such banks, trust companies or other depositories as may be designated by the Board, and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Chair or Vice Chair, the President, or the Board. With the approval of the Board, the Treasurer shall have the authority to cause all stocks, bonds, securities, and other financial instruments not constituting readily available funds that are received by the USAFRC to be sold in such a manner as to not result in any diminution in the value thereof and the proceeds therefrom to be deposited to one or more accounts of the USAFRC. If required by the Board, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board shall determine.

(g) Assistant Secretaries and Assistant Treasurers. The Assistant Secretary, or if there shall be more than one, the Assistant Secretaries in the order determined by the Board, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. The Board may require any Assistant Treasurer to give a bond for the faithful discharge of his or her duties in such sums and with such surety or sureties as the Board shall determine. The Assistant Secretaries and Assistant Treasurers shall all perform such other duties as shall be assigned to them by the Secretary and Treasurer, respectively, or by the Chair or Vice Chair, the President, or the Board.

ARTICLE V

Committees

Section 5.1 Committees of Directors. The Board, by resolution adopted by a majority of the directors at a duly called meeting thereof, may designate one or more committees, which committees, to the extent provided in such resolution, shall have and exercise the authority of the Board in the management of the USAFRC, except that no such committee shall have the authority of the Board in reference to amending, altering or repealing these Bylaws; electing, appointing or removing any member of any such committee or any director or officer of the USAFRC; amending the Articles of Incorporation of the USAFRC, restating the Articles of Incorporation of the USAFRC, adopting a plan of merger or adopting a plan of consolidation with another organization; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the USAFRC; authorizing the voluntary dissolution of the USAFRC or revoking proceedings therefor; adopting a plan for the distribution of the assets of the USAFRC; or amending, altering or repealing any action or resolution of the Board which by its terms provides that it shall not be amended, altered or repealed by such committee. Each committee so designated by the Board shall be comprised of two or more directors and such other persons as are appointed to the committee by the Board. The Board may at any time, in its sole and absolute discretion, terminate the existence of any committee designated pursuant to this Section 5.1.

Section 5.2 Executive Committee. The USAFRC shall have an Executive Committee which shall be comprised of the Chair of the Board, the President of the USAFRC, and any other directors appointed by the Board from time to time to serve on the Executive Committee. Except as provided in Section 5.1 above, the Executive Committee shall possess and may exercise all the powers and functions of the Board in the management and direction of the affairs of the USAFRC in all cases in which specific directions shall not have been given by the Board.

Section 5.3 Standing Committees. The Chair shall have authority to appoint standing committees and to designate the chairperson of each such committee. Each standing committee of the USAFRC shall be chaired by a member of the Board, but may have as part of its membership persons not presently serving as a director of the USAFRC. A written statement of the purposes and responsibilities of each standing committee shall be prepared by the Chair thereof and submitted to the Executive Committee for its approval. Each standing committee shall keep records of its activities and shall, at such time as requested by the Executive Committee or Board of the USAFRC, submit a report on work done by the said committee. No standing committee shall enter into any contract or incur any indebtedness or financial obligation of any kind for or on behalf or in the name of the USAFRC except as expressly authorized by the Executive Committee or the Board.

Section 5.4 Other Committees. It is anticipated that from time to time ad hoc committees will be appointed and approved by the Board.

Section 5.5 Committee Governance. Subject to approval by the Board or the Executive Committee, each committee of the USAFRC shall have the power to adopt such rules and procedures as may be necessary for the effective conduct of the work entrusted to it.

ARTICLE VI

Financial Reporting and Compensation

Section 6.1 Financial Reports and Audits. The USAFRC shall cause to be prepared and delivered to the Board of Trustees of the University an annual report containing a summary of operations of the USAFRC for the immediately preceding year and financial and other information for such year similar to that which is required to be reported on an IRS Form 990 filed by tax-exempt organizations with the Internal Revenue Service. The Board of Trustees shall have the right at any time, and from time to time, to cause an audit of the USAFRC's financial records to be performed at the expense of the USAFRC.

Section 6.2 Compensation. Directors, officers and committee members are expected to serve without compensation. A director, officer or committee member shall be reimbursed for properly substantiated expenses incurred in connection with the fulfillment of that director's, officer's or committee member's authorized duties or responsibilities or which are otherwise directly related to the business or affairs of the USAFRC and which are deemed to be reasonable in amount by an officer of the USAFRC.

ARTICLE VII

Contracts: Commitments

Unless expressly authorized by the Board or Executive Committee of the USAFRC, and except as provided in these Bylaws, no officer, agent, employee or other person or persons having any relationship or affiliation with the USAFRC shall have any power or authority to cause the USAFRC to enter into any contract or commitment or to undertake any obligation or incur any liability for any purpose whatsoever.

ARTICLE VIII

Exculpation of Directors

Section 8.1 Acts of Director. No director shall be liable to anyone for any acts on behalf of the USAFRC or any omissions with respect to the USAFRC committed by such director, except for his or her own willful neglect or default.

Section 8.2 Acts of Other Directors. No director shall be liable to anyone for any act of neglect or default on the part of any one or more of the other directors in the absence of specific knowledge on the part of such director of such neglect or default.

Section 8.3 Indemnification of Directors, Officers and Others. The USAFRC shall indemnify any member of the Board or officer or former member of the Board or former officer, or any person who is serving or who has served at the request of the USAFRC as a director or officer of another entity, whether such other entity be for profit or not for profit, in which the USAFRC owns shares of capital stock or of which it is a creditor, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty with respect to the matter in which indemnity is sought. By order of the Board, the USAFRC may, under comparable terms and limitations, indemnify employees and agents of the USAFRC with respect to activities within the scope of their services.

Section 8.4 Insurance. Nothing herein provided shall limit or otherwise affect the power of the USAFRC to purchase and maintain insurance on behalf of any person who is or was a director, trustee, officer, employee or agent of the USAFRC or is or was serving at the request of the USAFRC in any of such capacities with respect to another USAFRC, against any liability asserted against him/her and incurred by him/her in any such capacity or arising out of his status as such, whether or not the USAFRC would have the power or would be required to indemnify him/her against such liability under the provisions of these Bylaws or any applicable law.

ARTICLE IX

General

Section 9.1 Fiscal Year. The USAFRC shall operate on the basis of a fiscal year ending on September 30 of each year.

Section 9.2 Checks. All checks or demands for money and notes of the USAFRC shall be signed by any two of the following officers: Chair of the Board, President of the USAFRC, or Treasurer of the USAFRC.

Section 9.3 Deposits. All funds of the USAFRC shall be deposited from time to time to the credit of the USAFRC in one or more banks, trust companies or other depositories as the Board or the Executive Committee may from time to time designate, upon such terms and conditions as shall be fixed by the Board or the

Executive Committee. The Board or the Executive Committee may from time to time authorize the opening and keeping, with any such depository as it may designate, of general and special bank accounts and may make such special rules and regulations with respect thereto, not inconsistent with the provisions of these Bylaws, as it may deem necessary.

Section 9.4 Corporate Seal. The Board shall select a corporate seal which shall have inscribed thereon the name of the USAFRC, the words "Alabama" and "Corporate Seal," and such seal may include the date of incorporation of the USAFRC. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Section 9.5 Voting of USAFRC's Securities. Unless otherwise ordered by the Board, the Chair or Vice Chair of the Board, the President or any Vice-President, or such other officer as may be designated by the Board to act in the absence of the Chair or Vice Chair of the Board, the President or any Vice President, shall have full power and authority on behalf of the USAFRC to attend and to act and to vote, and to execute a proxy or proxies empowering others to attend and to act and to vote, at any meetings of security holders of any entity in which the USAFRC may hold securities, and at such meetings the Chair of the board, or such other officer of the USAFRC, or such proxy, shall possess and may exercise any and all rights and powers incident to the ownership of such securities, and which as the owner thereof the USAFRC might have possessed and exercised, if present. The Secretary or any Assistant Secretary may affix the corporate seal to any such proxy or proxies so executed by the Chair of the Board, or such other officer, and attest the same. The Board by resolution from time to time may confer like powers upon any other person or persons.

Section 9.6 Gifts. The Board may accept on behalf of the USAFRC any contribution, gift, bequest or devise for and consistent with the general purposes, or for and consistent with any specific purpose, of the USAFRC.

Section 9.7 Limitation on Pecuniary Obligations. With the exception of grants made or moneys paid by USAFRC to the University, pecuniary obligation of more than Twenty-Five Thousand Dollars (\$25,000.00) shall be undertaken by the USAFRC or any director, officer or employee thereof, without sanction by resolution of the Board or the Executive Committee adopted at a duly called meeting thereof or by an action by written consent signed by all the members thereof.

Section 9.8 Additional Organizations. The Board may authorize the formation of such subsidiary, auxiliary, associated and affiliated organizations as will in the opinion of the Board assist in effecting the purposes of the USAFRC. The organizational and governing documents and instruments of any subsidiary, auxiliary, associated or affiliated organization so authorized shall be subject to the approval of the Board or the Executive Committee. Each such authorization shall, regardless of its terms, be revocable at any time in the sole discretion of the Board.

ARTICLE X

Amendment of Bylaws

Any amendment of the provisions of these Bylaws shall require the joint approval of the Board and the Board of Trustees of the University. No amendment to these Bylaws may be made so as to avoid any limitations imposed by the Articles of Incorporation of the USAFRC as they may at any time exist.

The foregoing were adopted as the Bylaws of University of South Alabama Foundation for Research and Commercialization, a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, at the meeting of its Board of Directors held on _____, 2013.

Secretary/Treasurer

STATE OF ALABAMA
COUNTY OF MOBILE

The undersigned authority hereby certifies that _____, whose name as Secretary for the University of South Alabama Foundation for Research and Commercialization is signed to the foregoing document, and who is known to me, acknowledged before me on this date that, being informed of the contents of the foregoing document, _____, as such officer and with full authority, executed the same voluntarily for and as the act of the University of South Alabama Foundation for Research and Commercialization.

Given under my hand the day of _____, 2013.

NOTARY PUBLIC
My Commission Expires: _____