

**BY-LAWS**  
**OF**  
**PKD FOUNDATION**  
**(Formerly the ‘PKR Foundation’)**  
**Incorporated August 20, 1982**

**(Amended as of 4/28/01; 1/26/02; 1/25/03; 10/22/05; 1/28/06; 4/23/06; 1/19/07; 4/29/07;  
4/26/08; 9/25/09; 1/23/10; 6/10/12; and 10/18/14)**

**ARTICLE I**

Purposes

PKD Foundation, a Missouri nonprofit corporation (the “Corporation”), as provided in its Articles of Incorporation (“Articles”), is organized to carry out certain charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, including the development and implementation and support of a comprehensive program of research and study of the cause, treatment and cure of polycystic kidney disease, and to publish and distribute the results and conclusions of such research and to sponsor symposiums, lectures and seminars on polycystic kidney disease; and to those ends to receive, take and hold by gift, grant, assignment, transfer, devise or bequest, either absolutely or in trust for such purposes, any property, real, personal, or mixed, without limitation as to amount or value except such limitations, if any, as may be imposed by law; provided, however, that no part of the net earnings of the Corporation shall inure to the benefit of any private individual, and provided further that no substantial part of its activities shall involve the carrying on of propaganda, or otherwise attempting to influence legislation.

The Corporation is a nonprofit, public benefit corporation under the Missouri Nonprofit Corporation Act (the "Act"). These By-Laws are intended to comply with the requirements of the Act. If any provision of these By-Laws or the application of any such provision to any person or circumstance is inconsistent with any requirements of the Act, the requirements of the Act will control and be applied. The Act will also apply with respect to any matters provided for in the Act that are not otherwise provided for in these By-Laws or the Articles.

**ARTICLE II**

Offices

The Corporation shall have and continuously maintain in the State of Missouri a registered office and a registered agent whose office is identical with such registered office, and may have such

other offices within or without the State of Missouri as the Board of Trustees may from time to time determine.

### **ARTICLE III**

#### Members

The Corporation shall not have members.

### **ARTICLE IV**

#### Board of Trustees

**Section 1.** General Powers. The affairs of the Corporation shall be managed and overseen by its Board of Directors (which may be referred to as the Corporation's "Board of Directors" or "Board of Trustees," or "Board" and with the individual members of the Board being referred to as "Directors" or "Trustees"). The Board shall appoint a chief executive officer ("CEO") of the Corporation. The Board shall have and is vested with all and unlimited powers and authorities, except as it may be expressly limited by law, the Articles or these By-Laws, to supervise, control, direct and manage the property, affairs and activities of the Corporation, to determine the policies of the Corporation, to do or cause to be done any and all lawful things for and on behalf of the Corporation, to exercise or cause to be exercised any or all of its powers, privileges or franchises, and to seek the effectuation of its objects and purposes; provided, however, that:

- (a) the Board shall not authorize or permit the Corporation to engage in any activity not permitted to be transacted by the Articles or by a corporation organized under the Act,
- (b) none of the powers of the Corporation shall be exercised to carry on activities, otherwise than as an insubstantial part of its activities, which are not in themselves in furtherance of the purposes of the Corporation,
- (c) all income and property of the Corporation shall be applied exclusively for its nonprofit purposes, and
- (d) no part of the net earnings or other assets of the Corporation shall inure to the benefit of any Trustee, officer, contributor, or other private individual, having, directly or indirectly, a personal or private interest in the activities of the Corporation, except that the Corporation shall be authorized and empowered to (1) pay reasonable compensation for services rendered, (2) make payments for reimbursement in reasonable amounts for expenses actually incurred for the benefit of the Corporation, and (3) make payments in furtherance of the purposes of the Corporation as set forth in the Articles.

**Section 2.** Number and Tenure. The Board of Trustees shall have a minimum of five Trustees and a maximum of 19 Trustees. The Board shall have the power to change the number of Trustees by resolution adopted by two-thirds (2/3) of the Trustees in office. Each Trustee's term of office shall be three years, except as

provided in Section 7 hereof. Trustees shall be divided as evenly as practicable into three annual classes with staggered terms in respect to terms of office. Trustees shall be ineligible for election to the Board of Trustees for a period of two years after serving six successive years as Trustee. Notwithstanding the foregoing, (i) the Chairman shall be eligible for election to the Board of Trustees so long as he or she continues to serve contemporaneously as Chairman; and (ii) the Past Chair shall be eligible, at his or her discretion, to remain on the Board of Trustees for one additional year following completion of term of service as Chairman. Trustees must be natural persons, but need not be residents of the United States. The phrase "Trustees in office" as used in these By-Laws refers to the members of the Board who are serving on the Board at the time a decision or action is made. The term of office of a person elected as a Trustee will not commence until the time the person accepts the office of Trustee either by a written acceptance or by participating in the affairs of the Corporation at a meeting of the Board or otherwise. The term of a Trustee will end automatically upon his or her death, adjudicated incapacity, resignation, or removal. A Trustee may resign at any time by giving written notice to the Chair, Vice-Chair, or Secretary, except that such notice may not be given to oneself. The resignation will be effective immediately upon delivery of the notice specified above or at such later time during the Trustee's remaining term as he or she specifies in the notice. Acceptance of the resignation will not be necessary to make it effective. Any Trustee may be removed, with or without cause, by action of at least two-thirds (2/3) of the Trustees in office, regardless of whether the applicable Trustee has received notice of such removal.

**Section 3.** Regular Meetings. A schedule of regular meetings of the Board of Trustees for the following Fiscal Year (as defined in Article X) shall be approved by the Board of Trustees no later than June 30 of each year. The annual election of Trustees and/or officers shall occur at the final regular meeting of the Board of Trustees each Fiscal Year ("Annual Election"). Terms of office for Trustees and/or officers elected during the Annual Election will begin on the first day of the upcoming Fiscal Year. Meetings of the Board of Trustees may be held within or without the State of Missouri.

**Section 4.** Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of the Chairman or two or more of the Trustees and may be held at any place, either within or without the State of Missouri, specified in the notice of meeting. If the notice of meeting does not fix a place for holding such special meeting, it shall be held at the Corporation's principal place of business.

**Section 5.** Notice. Notice of any meeting of the Board of Trustees shall be given at least ten business days previously thereto by written notice delivered personally or sent by mail or e-mail to each Trustee at his or her address as shown by the records of the Corporation. Any Trustee may waive notice of any meeting. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends any meeting for the express purpose of objecting 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 Board of Trustees need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws. Written notice in proper form will be effective on the earliest of the following: when receipt is documented by a successful facsimile or electronic mail transcript; the fifth (5th) day after deposit with the U.S. Postal Service with postage prepaid if sent by first class mail or by registered or certified mail (or, if earlier, the date of the signed receipt if sent by registered or certified mail); on the first business day following the date of dispatch if sent by overnight courier service; or when received if given by hand delivery (in person or by courier service).

**Section 6.** Quorum; Voting. A majority of the Trustees in office shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees; provided that if less than a majority of the Trustees are present at said meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice. All actions taken at any meeting of the Board of Trustees at which a quorum is present shall be decided by a majority vote of Trustees present unless otherwise specified in these By-Laws or required by law; the Foundation's governance process does not make provision for proxy voting. Each Trustee shall have one vote in all matters to be voted on by the Board of Trustees.

**Section 7.** Vacancies. Any vacancy occurring in the Board of Trustees and any Trustee position to be filled by reason of an increase in the number of Trustees may be filled by the Board of Trustees. Such action may be taken by the Board of Trustees at a regular or special meeting. A Trustee elected by reason of an increase in the number of Trustees may be elected to a term of office of less than three years.

**Section 8.** Compensation. Trustees, as such, shall not receive any compensation for simply serving as a Trustee, but may be reimbursed by the Corporation for expenses of attendance at regular or special meetings of the Board of Trustees; provided that nothing herein contained shall be construed to preclude any Trustee from serving the Corporation in any other capacity and receiving compensation in return for services rendered to the Corporation. Trustees requesting reimbursement of expenses in order to attend a Board of Trustees meeting shall submit a request to the Chairman no later than 30 days in advance of the next regular or special meeting for which the Trustee is requesting reimbursement. The Chairman shall have the sole authority to approve or deny such request pursuant to the Corporation's travel reimbursement policies.

**Section 9.** Telephone Conference Calls. The members of the Board of Trustees or of any committee designated by the Board of Trustees may participate in a meeting by, or conduct the meeting through the use of, any means of communication by which all persons participating in the meeting may simultaneously hear each other

during the meeting. A person participating in a meeting by this means is deemed to be present in person at the meeting.

**Section 10.** Action by Consent. Any action required or permitted to be taken at a meeting of the Board of Trustees, or of the Executive Committee or any other committee of the Board of Trustees, may be taken without a meeting if the action is taken and consent is signed by all of the Trustees in office (or all of the members of the Executive Committee or other committee, as applicable). Any such consent may, to the fullest extent permitted by applicable law, be transmitted to the Corporation by any of the means permitted for notices under these By-Laws and delivery of such consent will be deemed made and effective in the same manner as provided for such notices. Such consents shall have the same force and effect as a unanimous vote of the Trustees at a meeting duly held and may be stated as such in any certificate or document. Such action and written consents thereto shall be filed with the minutes of the meetings of the Board.

**Section 11.** Conflict of Interest Policy. Where a Trustee may be related in any way to any firm or organization with which the Corporation conducts or may consider conducting business, that relationship must be disclosed by that Trustee to the full Board of Trustees. Any transaction involving a potential conflict of interest between a Trustee and the Corporation shall be conducted with fair, open and honest bidding or other objective measure to promote the best interests of the Corporation. Decisions regarding a transaction involving a potential conflict of interest between a Trustee and the Corporation shall be made only after open discussion at a meeting of the full Board of Trustees. The Trustee with the potential conflict may properly participate in such discussion, may not be counted in the quorum necessary to hold the meeting, and shall not vote in the final decision. Each member of the Board of Trustees shall annually complete a Conflict of Interest form and submit same to the Secretary of the Corporation. In addition, the Board may adopt a separate written conflict of interest policy.

**Section 12.** Absence. Any elected officer or Trustee who shall be absent from two (2) regular meetings of the Board of Trustees during a single Fiscal Year, without being excused for good reason by the Chairman (or the Vice-Chair in the Chairman's absence), shall automatically vacate his or her seat on the Board of Trustees and the vacancy may be filled as prescribed in these By-Laws; however, the Board of Trustees shall consider each absence of an elected officer or Trustee as a separate circumstance and may expressly excuse or waive such absence by affirmative vote of a majority of its members.

## ARTICLE V

### Officers

**Section 1.** Officers. The officers of the Corporation shall be a Chairman, a Vice-Chair, a Secretary and a Treasurer and such other officers as may be elected in accordance

with the provisions of this Article. Any two or more offices may be held by the same person except that (a) no person may hold both the offices of Chairman and Secretary and (b) no person may hold both the offices of Chairman and Treasurer.

- Section 2.** Election. The officers of the Corporation shall be elected every year by the Board of Trustees at the Annual Election. Officers shall hold office for one Fiscal Year or until their successor has been duly elected and qualified. No officer shall serve more than two consecutive terms in one office, in addition to filling any unexpired term of his or her predecessor in office. No Trustee may serve more than four consecutive years as an officer except for a Trustee who is serving as Chairman.
- Section 3.** Removal. Any officer elected or appointed by the Board of Trustees may be removed by a two-thirds vote of the total Board of Trustees whenever in its judgment the best interests of the Corporation would be served thereby.
- Section 4.** Vacancies. A vacancy in any office may be filled or new offices created and filled at any regular or special meeting or by vote of the Board of Trustees. An officer elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. In the case of a permanent vacancy in the office of Chairman, the Vice Chair will succeed until the next Annual Election.
- Section 5.** Duties of the Chairman. When elected, the Chairman shall preside at meetings of the Board of Trustees and, subject to the direction and control of the Board of Trustees, shall direct the policy and oversight of the Corporation. The Chairman shall perform such other duties as may be prescribed by the Board of Trustees from time to time, including chairing the Executive Committee. The Chairman shall appoint members to all committees of the Board of Trustees and will serve as an ex-officio non-voting member of all committees. Upon completion of the Chairman's term, he or she becomes the Past Chair and may, at his or her discretion, serve one additional year on the Board for the purposes of leadership and institutional continuity.
- Section 6.** Duties of the Vice-Chair. When elected and in the absence of the Chairman, or in the event of the Chairman's inability or refusal to act, the Vice-Chair shall preside at all meetings of the Board of Trustees, and shall perform such other duties as may be prescribed by the Board of Trustees from time to time. The Past Chair may be elected to serve as Vice-Chair if he or she serves one additional year on the Board.
- Section 7.** Duties of the Treasurer. The Treasurer shall be responsible for monitoring the control, receipt and custody of all assets of the Corporation; monitoring disbursements as authorized by the Board of Trustees; reporting receipt, use and disbursement of all assets of the Corporation; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Chairman or by the Board of Trustees, including chairing the Financial Oversight Committee.

**Section 8.** Duties of the Secretary. The Secretary shall see that the minutes of all meetings of the Board of Trustees are kept; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; be the custodian of the corporate records; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Chairman or by the Board of Trustees.

## **ARTICLE VI**

### Committees

**Section 1.** Formation of Committees with Management Authority. The Board of Trustees, by resolution or charter adopted by a majority of the Trustees in office, may designate committees, in addition to the Executive Committee, Governance Committee, Planning & Assessment Committee and the Financial Oversight Committee set forth in this Article VI, which shall have and exercise the authority of the Board of Trustees in the oversight of the Corporation to the extent provided in said resolution or in these By-Laws. Designation of such committees and the delegation of authority thereto shall not operate to relieve the Board of Trustees, or any individual Trustee, of any responsibility imposed upon it or him or her by law. Each such committee shall consist of a chair and three or more Trustees. No Trustee shall serve more than two consecutive years as chair of the same committee. The Board of Trustees may withdraw or limit the powers of any such committee at any time and, subject to the rights created in outside parties, may amend or rescind any action taken by any such committee.

**Section 2.** Executive Committee. The Chairman will chair the Executive Committee. Membership on the Executive Committee will include the Board's (1) Chairman; (2) Vice-Chair; (3) Secretary; (4) chairs of any standing committees which the Vice-Chair or Secretary does not Chair and (5) chair of the Scientific Advisory Committee, subject to ratification by the Board of Trustees at the Annual Election. Between meetings of the Board of Trustees, the Executive Committee shall have and exercise the power and authority of the Board of Trustees in the oversight of the Corporation except for matters relating to the finances of the Corporation.

Other functions include: (1) ensuring effective delegation from the Board to the CEO including acting as adviser; reviewing the CEO's performance; dealing with sensitive human resource and/or emergency issues; and (2) organizing the work of the Board in terms of planning Board meetings; approving Board agendas; delegating responsibilities; and receiving departmental reports through the CEO.

The Executive Committee will meet in advance of regular Board meetings and on an "as needed" basis; meetings will be called by the Chairman in consultation with the CEO.

**Section 3.** Financial Oversight Committee. The Financial Oversight Committee shall consist of the Treasurer and at least three additional Trustees appointed by the Chairman. Between meetings of the Board of Trustees, the Financial Oversight Committee shall have and exercise the power and authority of the Board of Trustees in the oversight of the finances of the Corporation.

The Financial Oversight Committee is to be responsible for the review and oversight of all financial matters, including but not limited to: (a) budget review and recommendation; (b) review of interim financial statements; (c) work and interface with independent auditors as appropriate and presentation of the auditor's report with accompanying annual financial statements to the Board; and (d) oversight of contract management.

Other functions include: (1) ensuring the Corporation's maintenance of its tax-exempt status and alignment with legal and/or ethical norms such as Sarbanes-Oxley; and (2) reviewing accounting procedures and practices employed by the Foundation to insure the quality and integrity of financial systems. The Financial Oversight Committee will meet prior to every Board meeting and as often as necessary for the fulfillment of their tasks, with meetings called by the Treasurer in consultation with the CEO.

**Section 4.** Governance Committee. The Governance Committee shall consist of a Chair and at least three additional Trustees appointed by the Chairman. The Governance Committee shall nominate one eligible person for each Trustee position and office to be filled by vote of the Board of Trustees and shall report its nominees to the Board of Trustees prior to such vote. The Governance Committee shall serve in a leadership capacity regarding the identification, recruitment, nomination, orientation and retention of Trustees and will seek to identify the Board's (1) needs, (2) size, and (3) the mix of key competencies its members represent. The Governance Committee, in consultation with the CEO, shall be responsible for cultivating and qualifying appropriate candidates, managing the Board officer selection process, overseeing new member orientation and ongoing Board training, and engaging all members in meaningful service.

Other functional responsibilities include periodic review of organizational structure/function to ensure the By-Laws are being updated and followed and to ensure continued governance effectiveness including, but not limited to, Board tenure, Board size, and related issues. The Governance Committee will meet prior to every Board meeting and as often as necessary for the fulfillment of their tasks, with meetings called by the Committee Chair in consultation with the CEO.

**Section 5.** Planning & Assessment Committee. The Planning & Assessment Committee shall consist of a Chair and at least three additional Trustees appointed by the Chairman for the purpose of assuring the organization remains true to its mission and vision through the careful development of supportive strategies, tactics,

business planning and metrics and to generate regular reports to the Board of Trustees regarding execution plans, related costs, progress and outcome measurements.

**Section 6.** Formation of Other Committees not having Management Authority. Other committees not having and exercising the authority of the Board of Trustees in the management of the Corporation, to be known as Advisory Committees, may be designated by a resolution adopted by the Board of Trustees at a regular or special meeting. Except as set forth otherwise herein, any such committee may consist of Trustees and non-Trustees. The chair of each committee shall be a member of the Board of Trustees.

**Section 7.** Formation of Task Forces not having Management Authority: As a general rule, prior to any meeting of the Board of Trustees (but not less than 45 days), any Board member may recommend to the Executive Committee an item for potential inclusion on the agenda. After presentation and discussion, the Chairman (in consultation with one or more of the committee chairs) will determine if the issue at hand should be handled by staff or if a Task Force should be formed to research the issue and submit an action plan to the full Board.

In general, a Task Force: (a) will consist of between 3-7 members; (b) will emanate from the function being addressed by its committee of origin; (c) can also have its genesis in the recommendation from Executive staff; (d) will exist for less than 12 months (longer or shorter, if necessary – based on achievement of its goals) and then disband; (e) will not require the establishment of a “job description;” and (f) will bring its recommendation(s) back to the Board of Trustees for review and (possible) action.

If the Executive Committee approves the formation of a Task Force, the Chairman shall, at his or her discretion, appoint its members and/or delegate same to the Governance Committee.

**Section 8.** Tenure of Committee Members. Each member of the Executive Committee, Financial Oversight Committee, Planning & Assessment Committee and Governance Committee shall continue as such for a one year term and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member is removed from such committee by the Chairman, or unless such member shall cease to be a Trustee or otherwise qualify as a member thereof. Each member of any other committee shall continue as such for a one-year term and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member is removed from such committee by the Chairman, or unless such member shall cease to be a Trustee or otherwise qualify as a member thereof. Vacancies in the membership of any committee shall be made in the same manner as provided for original appointments.

**Section 9.** Quorum. Unless otherwise provided in the resolution of the Board of Trustees

designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

**Section 10.** Committee Rules. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with rules adopted by the Board of Trustees.

**Section 11.** Advisory Committees. Advisory Committees, by their nature, are intended to connect the Board and the organization as a whole with key organizational constituencies which possess unique knowledge/experience/skills helpful to complement the Board's work – not duplicate or intrude upon it.

The Board shall maintain at least one advisory committee, the Scientific Advisory Committee. The Chair of this advisory committee shall (a) serve on the Executive Committee; (b) serve on the Board of Trustees, and (c) report at least annually to the Board of Trustees.

## ARTICLE VII

### Scientific Advisory Committee

**Section 1.** General. The Scientific Advisory Committee ("SAC") is an advisory body which shall provide guidance and input to the Board of Trustees and the Corporation regarding scientific matters in the area of renal cystic diseases as they relate to research, professional education and the application of these matters to clinical science. The SAC shall also be responsible for guidance and development of research programs of the Corporation.

**Section 2.** Membership. The Board of Trustees will appoint members of the SAC.

**Section 3.** Officers; Removal. The Board of Trustees shall appoint a member of the SAC to act as Chair of the SAC, and may create other SAC officer positions to be filled by members of the SAC. Any person so appointed as a member of the SAC or as one of its officers may be removed by a two-thirds vote of the total Board of Trustees whenever in its judgment the best interests of the Corporation would be served thereby. The SAC Chair shall serve on the Board of Trustees (subject to term limits in Article IV, Section 2) and the Executive Committee.

**Section 4.** Governance. The SAC shall govern its operation pursuant to its by-laws which, together with all alterations, amendments and repeals thereto, shall be subject to approval by the Board of Trustees.

## ARTICLE VIII

### Contracts, Checks, Deposits and Funds

- Section 1.** Contracts. The Board of Trustees may authorize any officer or officers, agent or agents of the Corporation, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.
- Section 2.** Checks, Drafts, and Other Instruments. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Trustees.
- Section 3.** Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Trustees may select.
- Section 4.** Gifts. The Board of Trustees may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

## ARTICLE IX

### Books and Records

The Corporation shall keep correct and complete books and records of account and shall also keep, or cause to be kept, minutes of the proceedings of its Board of Trustees.

## ARTICLE X

### Fiscal Year

The Fiscal Year (“Fiscal Year”) of the Corporation shall begin on the first day of July and end on the last day of June in each year.

## ARTICLE XI

### Seal

The Corporation will not have a corporate seal.

## ARTICLE XII

### Indemnification

**Section 1.** Indemnification in Actions by Third Parties. The Corporation will 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 Corporation) by reason of the fact that such person is or was serving in an Indemnifiable Capacity (as defined below) against all liabilities and expenses, including judgments, amounts paid in settlement (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Corporation in accordance with Section 5 of this Article XII, which approval will not be unreasonably withheld), attorneys' fees, ERISA excise taxes or penalties, fines and other expenses actually and reasonably incurred by such person in connection with such action, suit or proceeding (including the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and not in a manner that was knowingly fraudulent or deliberately dishonest or constituted willful misconduct 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 Corporation will not be required to indemnify or advance expenses to any such person seeking indemnification or advancement of expenses in connection with an action, suit or proceeding initiated by such person 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, will not, of itself, create a presumption that such person did not act in good faith that such person acted in a manner that was knowingly fraudulent or deliberately dishonest or constituted willful misconduct, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that such person's conduct was unlawful.

**Section 2.** Indemnification in Derivative Action. The Corporation will 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 by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was serving in an Indemnifiable Capacity against amounts paid in settlement thereof (provided that such settlement and all amounts paid in connection therewith are approved in advance by the Corporation in accordance with Section 4 of this Article XII, which approval will not be unreasonably withheld) and all expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit or proceeding (including the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and not in a manner that was knowingly fraudulent or deliberately dishonest or constituted willful misconduct, except that no indemnification under this Section

2 will be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for not acting in good faith or for acting in a manner that was knowingly fraudulent or deliberately dishonest or constituted willful misconduct in the performance of such person's duty to the Corporation unless and only to the extent that the court in which the action, suit or proceeding was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

**Section 3.** Indemnification for Success on the Merits or Otherwise. Notwithstanding the other provisions of this Article XII, to the extent that a person who is or was serving in an Indemnifiable Capacity has been successful on the merits (in whole or in part, to the extent permitted by the Act) or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article XII (including the dismissal of any such action, suit or proceeding without prejudice or the settlement of such action, suit or proceeding without admission of fault or liability), or in defense of any claim, issue or matter therein, such person will be indemnified against amounts approved by the Corporation to be paid in settlement of any such action, suit or proceeding and against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. For purposes of this Section 3, references to "the Corporation" includes, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of any Other Enterprise, will stand in the same position under the provisions of this Section 3 with respect to the resulting or surviving corporation as such person would have if such person had served the resulting or surviving corporation in the same capacity.

**Section 4.** Determination of Right to Indemnification. Prior to indemnifying a person pursuant to the provisions of Sections 1 or 2 of this Article XII, unless ordered by a court and except as otherwise provided by Section 3 of this Article XII, the Corporation will determine that such indemnification is proper because such person has met the specified standard of conduct entitling such person to indemnification as set forth under Section 1 or 2 of this Article XII. Any determination that a person will or will not be indemnified under the provisions of Section 1 or 2 of this Article XII will be made (i) by the Board by a majority vote of a quorum consisting of Trustees who were not parties to the action, suit or proceeding or (ii) if such quorum is not obtainable, or even if obtainable, if a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, and such determination will be final and binding upon the Corporation; provided, however, that if such determination is adverse to the person to be indemnified hereunder, such person may maintain an action in any court of competent jurisdiction against the Corporation to determine whether or

not such person has met the requisite standard of conduct and is entitled to such indemnification hereunder. For the purposes of such court action, an adverse determination as to the eligibility of a person for indemnification made pursuant to either of clauses (i) or (ii) of this Section 4 will not constitute a defense to such action nor create a presumption regarding such person's eligibility for indemnification hereunder. If such court action is successful and the person is or are determined to be entitled to such indemnification, such person will be reimbursed by the Corporation for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with any such action (including the investigation, defense, settlement or appeal of such action).

**Section 5.** 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, will be paid by the Corporation 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 unless it is ultimately determined that he or she is entitled to indemnification by the Corporation. Notwithstanding the foregoing, no advance will be made by the Corporation if a determination is reasonably and promptly made by (i) the Board by a majority vote of a quorum consisting of Trustees who were not parties to the action, suit or proceeding for which the advancement is requested or (ii) if a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, that, based upon the facts known to the board or counsel at the time such determination is made, such person did not act in good faith or such person acted in a manner that was knowingly fraudulent or deliberately dishonest or constituted willful misconduct or, with respect to any criminal action or proceeding, believed or had reasonable cause to believe such person's conduct was unlawful. In no event will any advance be made in instances where the Board or independent legal counsel reasonably determines that such person deliberately breached such person's duty to the Corporation.

**Section 6.** Non-Exclusivity. The indemnification and, to the extent permitted by the laws of the State of Missouri, the advancement of expenses, provided by this Article XII is not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under Mo. Rev. Stat. Section 537.117, under any other provision of law, under the Articles or these Bylaws or under any agreement, vote of disinterested Trustees, 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 will not limit in any way any right that the Corporation 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 XII will continue as to a person who has ceased to serve in an Indemnifiable Capacity and will inure to the benefit of the heirs, executors, administrators and estate of such a

person.

**Section 7.** Insurance. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, agent or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer, agent or employee of any Other Enterprise, 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 Corporation would have the power to indemnify such person against such liability under the provisions of this Article XII.

**Section 8.** Amendment and Vesting of Rights. Notwithstanding any other provision of these Bylaws or of the Articles, the terms and provisions of this Article XII may be amended or repealed and the rights to indemnification and advancement of expenses created hereunder may be changed, altered or terminated in the manner provided by Article XIII of these By-Laws for the amendment of the By-Laws of the Corporation; provided, however, the applicable laws of the State of Missouri may require an amendment to the Articles to authorize, direct or provide for further indemnification. The rights granted or created hereby will be vested in each person entitled to indemnification hereunder as a bargained-for, contractual condition of such person's serving or having served in an Indemnifiable Capacity and while this Article XII may be amended or repealed, no such amendment or repeal will release, terminate or adversely affect the rights of such person under this Article XII 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 9.** Definition of "the Corporation". For purposes of this Article XII, other than Section 3, references to "the Corporation" will, if and only if the Board determines, include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers serving at the request of such constituent corporation as a director, officer, employee, or agent of any Other Enterprise, so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of any Other Enterprise, will stand in the same position under the provisions of this Article XII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

**Section 10.** Certain Definitions. For purposes of this Article XII: References to serving in an "Indemnifiable Capacity" means service by a person as a Trustee or officer of the Corporation or service by a person at the

Corporation's request as a director, officer, employee, or agent of any Other Enterprise (as hereinafter defined);

References to "Other Enterprises" or "Other Enterprise" include any other corporation, partnership, limited liability company, joint venture, trust or employee benefit plan;

References to "fines" include any excise taxes assessed on a person with respect to an employee benefit plan;

References to "defense" include investigations of any threatened, pending or completed action, suit or proceeding as well as appeals thereof and also includes any defensive assertion of a cross-claim or counterclaim;

References to "serving at the request of the Corporation" include any service as a director, officer, employee, or agent of a corporation that imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries;

A person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner "not opposed to the best interests of the Corporation";

Unless the Board determines otherwise, any Trustee or officer of the Corporation who serves as a director, officer, employee, or agent of any Other Enterprise of which the Corporation, directly or indirectly, is a shareholder or creditor, or in which the Corporation is in any way interested, will be presumed to be serving as such director, officer, employee, or agent at the request of the Corporation; and

In all other instances where any person serves as a director, officer, employee, or agent of an Other Enterprise, if it is not otherwise established that such person is or was serving as such director, officer, employee, or agent at the request of the Corporation, the Board will determine whether such person is or was serving at the request of the Corporation, and it will not be necessary to show any actual or prior request for such service, which determination will be final and binding on the Corporation and the person seeking indemnification.

**Section 11.** Severability. If any provision of this Article XII 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 XII and the application of such provision to other persons or circumstances will not be affected thereby and to the fullest extent possible the court finding such provision invalid, illegal or unenforceable will 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 person who is or was serving in an Indemnifiable Capacity is entitled under any provision of this Article XII to indemnification by the Corporation 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 Corporation will nevertheless indemnify such person for the portion thereof to which such person is entitled.

**Section 12.** Tax Law Limitations. No provision of this Article XII shall permit or require indemnification or advancement of expenses insofar as such indemnification or advancement would constitute an "act of self-dealing" within the meaning of Section 4941(d) of the Internal Revenue Code of 1986, as amended, (the "Code") or a "taxable expenditure" within the meaning of Section 4945(d) of the Code, or otherwise violate any provisions of the Code or Treasury regulations applicable to the Corporation.

### **ARTICLE XIII**

#### Amendments

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the affirmative vote of two-thirds of the Trustees present at any meeting at which a quorum is present, provided that due notice of such meeting embodying such proposed changes shall have been furnished to or waived by all Trustees.

### **ARTICLE XIV**

#### Dissolution

Upon the dissolution of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, scientific or educational purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Trustees shall determine. The Corporation will also be subject to judicial dissolution, winding up and liquidation as provided in the Act.

The foregoing By-Laws constitute the duly amended and restated By-Laws of PKD Foundation as approved by the Board of Trustees of this Corporation at a meeting held on October 18, 2014.

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Chairman of the meeting

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Secretary of the meeting