



WILLIAM & MARY
FOUNDATION

**AMENDED AND RESTATED ARTICLES OF
INCORPORATION OF WILLIAM & MARY FOUNDATION**

**ARTICLE I
NAME**

The name of the Foundation is William & Mary Foundation (the “Foundation”), a Virginia nonstock corporation.

**ARTICLE II
PURPOSE**

The Foundation was created for the purpose of advancing and furthering the aims and purposes of The College of William & Mary (the “University” or “William & Mary”) by the development and application of financial and other resources to the progress of the University and is organized and operated exclusively for charitable, scientific, and educational purposes, within the meaning of section 501(c)(3) of the Internal Revenue Code, including receiving, managing, investing, and administering private gifts and property and making expenditures to or for the benefit of the University.

**ARTICLE III
RIGHTS AND RESTRICTIONS**

No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to its incorporator, Trustees, officers, or other private persons except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof. No substantial part of the activities of the Foundation shall be the carrying on



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of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE IV DISSOLUTION

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

ARTICLE V MEMBERS

The Foundation shall have no members.

ARTICLE VI TRUSTEES

The number of Trustees of the Foundation shall be not less than fifteen (15) and not more than forty (40). At no time shall persons employed by the University or serving on the University's Board of Visitors or as an officer of the University constitute a majority of the



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Trustees then serving on the Board of Trustees of the Foundation. The Foundation's Board of Trustees shall consist of the following classes of Trustees.

(a) Elected Trustees. The Foundation shall have not less than thirteen (13) and not more than thirty-eight (38) Trustees who are designated as the Elected Trustees. At the first annual meeting of the Board of Trustees, the number of Elected Trustees shall be divided into three (3) groups with each group containing one-third of the total, as nearly equal in number as possible. The terms of the Elected Trustees in the first group shall expire at the first annual meeting of the Board of Trustees after their appointment, the terms of the Elected Trustees in the second group shall expire at the second annual meeting of the Board of Trustees after their appointment, and the terms of the Elected Trustees in the third group shall expire at the third annual meeting of the Board of Trustees after their appointment. Thereafter, at each annual meeting of the Board of Trustees, one group of Elected Trustees shall be elected by the Board of Trustees for a term of three (3) years to succeed those whose terms expire. An Elected Trustee may serve three consecutive terms and thereafter shall not be eligible to serve as an Elected Trustee until he or she has not served as an Elected Trustee for a term of one year or more; provided, however, that the term of an Elected Trustee who is currently serving as an officer or is elected to serve as an officer at the time of expiration of his or her term as an Elected Trustee (or any extension of such term under this provision) shall be extended for such period as is necessary to permit such Elected Trustee to complete his or her service as an officer, and provided further that, upon recommendation of the Executive Committee, a Trustee who serves on the Investments Committee may serve four consecutive terms. Notwithstanding the term limits stated above, the term of the Chairperson of the Board of Trustees shall be



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extended, if necessary, after the expiration of such person's term as Chairperson to enable such person to remain on the Board of Trustees as the Immediate Past Chairperson for a period of one year. No individual shall be elected as an Elected Trustee without his or her prior consent.

(b) Ex Officio Trustees. The Foundation shall have two (2) Trustees who are designated as the Ex Officio Trustees, who shall have full voting rights. The Ex Officio Trustees shall be the individual who is then serving as the President of the University (or an individual designated by the President of the University to serve in his or her stead and for such term as designated by the President of the University) and the individual serving as Rector of the Board of Visitors of the University (the "BOV") (or an individual designated by the Rector of the BOV to serve in his or her stead and for such term as designated by the Rector of the BOV). The Ex Officio Trustees shall serve *ex officio* for a term that equals his or her tenure in the office specified (or in the case of a designee by the President of the University during the tenure of the President of the University in that office or in the case of a designee by the Rector of the BOV during the tenure of the Rector of the BOV in that office). No individual shall be an Ex Officio Trustee without his or her prior consent.

ARTICLE VII LIMIT ON LIABILITY AND INDEMNIFICATION

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

(a) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation, and appeal, as well as any amounts expended in asserting a claim for indemnification;

(b) "Foundation" means this corporation only and no predecessor entity or other legal entity;



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(c) “legal entity” means a corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise;

(d) “liability” means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation, including, without limitation, any excise tax assessed with respect to an employee benefit plan;

(e) “predecessor entity” means a legal entity the existence of which ceased upon its acquisition by the Foundation in a merger or otherwise; and

(f) “proceeding” means any threatened, pending, or completed action, suit, proceeding, or appeal whether civil, criminal, administrative, or investigative and whether formal or informal.

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

7.3 Indemnification of Trustees and Officers. The Foundation shall indemnify any individual who is, was, or is threatened to be made a party to a civil, criminal, administrative, investigative, or other proceeding (including a proceeding by or in the right of the Foundation) because such individual is or was a Trustee or officer of the Foundation, or because such individual is or was serving the Foundation or any other legal entity in any capacity at the request of the Foundation while a Trustee or officer of the Foundation, against all liabilities and reasonable expenses incurred in the proceeding, except such liabilities and expenses as are incurred because of such individual’s willful misconduct or knowing violation of the criminal law.



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Service as a director or officer of a legal entity controlled by the Foundation shall be deemed service at the request of the Foundation. The determination that indemnification under this Section 7.3 is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of Trustees and officers of the Foundation, as provided by law, and in the case of persons other than Trustees and officers of the Foundation, as provided in Section 7.4 of this Article; provided, however, that if a majority of the Trustees of the Foundation has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel selected by agreement of such person and the Board of Trustees. Unless a determination has been made that indemnification is not permissible, the Foundation shall make advances and reimbursements for expenses incurred by a Trustee or officer in a proceeding upon receipt of an undertaking from such Trustee or officer to repay the same if it is ultimately determined that such Trustee or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the Trustee or officer and shall be accepted without reference to such Trustee's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that a trustee or officer acted in such a manner as to make such Trustee or officer ineligible for indemnification. The Foundation is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its Trustees or officers to the same extent provided in this Section 7.3.

7.4 Indemnification of Others. The Foundation may, to a lesser extent or to the same



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

7.5 Miscellaneous. The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors, and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Foundation. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Foundation, and indemnification under policies of insurance purchased and maintained by the Foundation or others. However, no person shall be entitled to indemnification by the Foundation to the extent he or she is indemnified by another, including an insurer. The Foundation is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Foundation or any



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other legal entity at the request of the Foundation regardless of the Foundation's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Foundation from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

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

ARTICLE VIII
INTERNAL REVENUE CODE

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