

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 9 – J
DATE: October 6-7, 2021

SUBJECT

Dakota Bioproducts Innovation Institute

CONTROLLING STATUTE, RULE, OR POLICY

SDCL chapter [5-29](#) – Research Parks

SDCL chapter [47-22](#) – Nonprofit Corporations – Formation and General Powers

BACKGROUND / DISCUSSION

The 2012 Legislature enacted SDCL ch 5-29, which supplements its earlier actions by providing the Board with express, comprehensive authority to create research parks and to provide for their governance and operation. In particular, SDCL § 5-29-16 authorizes the Board to form nonprofit corporations under the chapter, “separate and apart from the state, to...develop, maintain, and operate...economic development initiatives that support the teaching, research, or service mission of the university system...” and SDCL § 5-29-17 stipulates that each such corporation formed by the Board pursuant to § 5-29-16 “be governed by, and all of the corporation's functions, powers, and duties shall be exercised by, a board appointed by the Board of Regents” and “have the Board of Regents as its sole member.”

South Dakota State University (SDSU) and South Dakota School of Mines & Technology (SDSMT) request that the Board authorize the formation of a nonprofit corporation (Dakota Bioproducts Innovation Institute) pursuant to its authority under SDCL chapter 5-29, and consistent with the Articles of Incorporation set forth in Attachment I, and the By-Laws set forth in Attachment II. The Dakota Bioproducts Innovation Institute will be organized and operated exclusively to engage in, advance, promote, and administer charitable, educational, and scientific activities and projects related to bioproducts and related

(Continued)

DRAFT MOTION 20211006_9-J:

I move to authorize the incorporation of the Dakota Bioproducts Innovation Institute by filing Articles of Incorporation in substantially similar form to those set forth in Attachment I, to adopt the by-laws for the corporation in substantially similar form to those set forth in Attachment II, and to authorize staff to take any actions necessary to effectuate the foregoing, which includes inserting the relevant information upon conclusion of related negotiations and approval of the Executive Director.

endeavors. This entity is intended to be the primary tenant of the Bioproducts Facility under construction at the Research Park at SDSU ([HB1210](#) during the 2021 Legislative Session). It will serve to connect core university activities with private sector resources and companies, to foster entrepreneurship and commercialization through a robust bioproducts and related endeavors research and development program, and to grow university research capacity, resources, and talent.

IMPACT AND RECOMMENDATION

The Dakota Bioproducts Innovation Institute will serve as the primary tenant in Bioproducts Facility being constructed at the Research Park at SDSU, serving as the conduit for the public/private partnership and research and economic development activities envisioned for the facility, with the Research Park at SDSU (Growth Partnership) being the owner/landlord of the facility.

ATTACHMENTS

Attachment I – Articles of Incorporation of the Dakota Bioproducts Innovation Institute

Attachment II – Dakota Bioproducts Innovation Institute Bylaws

**ARTICLES OF INCORPORATION OF DAKOTA BIOPRODUCTS
INNOVATION INSTITUTE**

We, the undersigned, of full age, for the purpose of forming a corporation under and pursuant to SDCL chapter 5-29 and the provisions of the South Dakota Nonprofit Corporation Act, South Dakota Codified Laws, Chapters 47-22 to 47-28, inclusive, and the laws amendatory thereof and supplementary thereto, do hereby associate ourselves as a body corporate and adopt the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be Dakota BioProducts Innovation Institute.

ARTICLE II

The period of duration of corporation existence of this corporation shall be perpetual.

ARTICLE III

This corporation is formed exclusively for the purpose of developing, maintaining, and operating economic development initiatives that support the teaching, research, or service mission of South Dakota State University and South Dakota School of Mines and Technology by expanding opportunities for South Dakota faculty members, researchers, and students to participate in the application of research results and technological innovations in bioproducts and related endeavors commerce, government, or public service and in furtherance of the objectives stated and defined in SDCL chapter 5-29, and all acts incident to or necessary for the accomplishment of the aforesaid purposes and do any and all acts incidental to the transaction of the business of this corporation or expedient for the attainment of the purposes stated herein.

Within the framework of these purposes, this corporation is organized and shall be operated exclusively to engage in, advance, promote, and administer charitable, educational, and scientific activities and projects related to bioproducts and related endeavors in its own behalf or as the agent, trustee, or representative of others; to connect core university activities with private sector

resources and companies, to foster entrepreneurship and commercialization through a robust bioproducts and related endeavors incubation program, to grow university research capacity, resources and talent, to facilitate physical infrastructure necessary to support creation and attraction of research and innovation based businesses in bioproducts and related endeavors, and to aid, assist, and contribute to the support of corporations, associations, and institutions which are operated exclusively for such bioproducts and related endeavors purposes and which are described in Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of future tax code. For those purposes and not otherwise, this corporation shall have only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, and to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom for the furtherance of the purposes of this corporation hereinabove set forth, of any of them, and to lease, mortgage, encumber, and use the same, and such powers which are consistent with the foregoing purposes and which are afforded to this corporation by the South Dakota Nonprofit Corporation Act, and by any future laws amendatory thereof and supplementary thereto. Provided, however, that all such powers of the corporation shall be exercised only so that this corporation's operations shall be exclusively within the contemplation of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of future tax code.

ARTICLE IV

No part of the net income or net earnings of this corporation shall inure to the benefit of any director, or individual, and no substantial part of its activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. This corporation shall not participate in or intervene (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

All references in these Articles of Incorporation to Sections of the Internal Revenue Code include any provisions thereof adopted by future amendments thereto and any cognate provisions in future internal revenue codes to the extent such provisions are applicable to this corporation.

ARTICLE V

The initial registered office of this corporation is c/o Vice President of Research and Economic Development's Office, South Dakota State University, Morrill Hall Box 2201, 1015 Campanile Avenue, Brookings, South Dakota, 57007. The name of this corporation's initial registered agent at such address is Vice President Daniel Scholl, who by his signature as an incorporator consents to serve as registered agent.

ARTICLE VI

The name and address of each incorporator is:

<u>Name</u>	<u>Post Office Address</u>
Daniel Scholl	Morrill Hall Box 2201 1015 Campanile Avenue Brookings, SD 57007
Ralph Davis	501 E. Saint Joseph St. Rapid City, SD 57701
David Chicoine	Box 452 Brookings, SD 57006

(TBD upon conclusion of related negotiations)

ARTICLE VII

The Corporation has one Member, the South Dakota Board of Regents. Operation of this Corporation shall be governed by its Board of Directors. The number of directors constituting the initial Board is **(5 or 6, TBD upon conclusion of related negotiations)**. The names and addresses of the persons who are to serve as such directors until the first annual meeting of the Member or until their successors are appointed and shall qualify, are:

<u>Name</u>	<u>Post Office Address</u>
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Daniel Scholl	Morrill Hall Box 2201 1015 Campanile Avenue Brookings, SD 57007
Ralph Davis	501 E. Saint Joseph St. Rapid City, SD 57701
David Chicoine	Box 452 Brookings, SD 57006
Barry Dunn	Morrill Hall Box 2201 1015 Campanile Avenue Brookings, SD 57007
James Rankin	501 E. Saint Joseph St. Rapid City, SD 57701

(TBD upon conclusion of related negotiations)

ARTICLE VIII

The By-Laws of the corporation shall hereafter determine the number of directors of the corporation, subject to the approval of the Member. The Directors shall be appointed at the annual meeting by the Member. Directors of this corporation shall not be personally liable for the payment of any debts or obligations of this corporation of any nature whatsoever, nor shall any of the property of the directors be subject to the payment of the debts or obligations of this corporation to any extent whatsoever. Time and place of the meetings of the Board of Directors and such other regulations with respect to them as are not in consistent with the provisions of these Articles of Incorporation, shall be specified, from time to time, in the By-Laws of this corporation.

ARTICLE IX

This corporation shall have no capital stock and there shall be one Member with voting rights of this corporation, the South Dakota Board of Regents.

ARTICLE X

These Articles of Incorporation may be amended from time to time in the manner prescribed by law, but no such amendment shall change the purpose of the corporation, the provisions of Article VII, Article VIII, Article IX or Article XI, hereof, without the consent of the Member.

ARTICLE XI

This corporation may be dissolved in accordance with the laws of the State of South Dakota. Upon dissolution of this corporation any surplus property remaining after the payment of its debts shall be disposed of by transfer to one or more of the institutions governed by the Member which qualify for exemption under section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of future tax code, at the time of transfer, to support South Dakota State University and/or South Dakota School of Mines and Technology educational and research activities, in such proportions as the Board of Directors of this corporation shall determine, subject to the approval of the Member and consent of the South Dakota Board of Regents.

Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of property and assets held by this corporation upon trust or other condition, or subject to any executory or special limitation, and such property, upon dissolution of this corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 2021.

Daniel Scholl

Ralph Davis

David Chicoine

(TBD upon conclusion of related negotiations)

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF _____)

On this ____ day of _____, 2021, before me, the undersigned officer, personally appeared Daniel Scholl, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public - State of South Dakota

My Commission Expires: _____

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF _____)

On this ____ day of _____ 2021, before me, the undersigned officer, personally appeared Ralph Davis, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public - State of South Dakota

My Commission Expires: _____

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF _____)

On this ____ day of _____ 2021, before me, the undersigned officer, personally appeared David Chicoine, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public - State of South Dakota

My Commission Expires: _____

STATE OF SOUTH DAKOTA)
 : ss
COUNTY OF _____)

On this ____ day of _____ 2021, before me, the undersigned officer, personally appeared **(TBD upon conclusion of related negotiations)**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public - State of South Dakota

My Commission Expires: _____

**BYLAWS
OF
Dakota Bioproducts Innovation Institute, Inc.**

ARTICLE I

Location

The principal office of this corporation, at which the general business of this corporation shall be transacted and where the record of this corporation shall be kept, shall be at Vice President of Research and Economic Development's Office, South Dakota State University, Morrill Hall Box 2201, 1015 Campanile Avenue, Brookings, South Dakota, 57007.

ARTICLE II

Purpose

The purpose of the Corporation is to provide opportunities for South Dakota faculty members, researchers, and students to participate in the application of research results and technological innovations in bioproducts and related endeavors.

ARTICLE III

Members and Annual Meeting

As provided in the Articles of Incorporation, this corporation has one member with voting rights of this corporation, the South Dakota Board of Regents, which shall hold its annual meeting of the Member pursuant to SDCL 47-23-4 immediately following the first regularly scheduled meeting of the South Dakota Board of Regents in each calendar year, or at such other time and place as may be designated from time to time by the Member.

ARTICLE IV

Directors

The Board of Directors shall consist of five (5) to nine (9) voting members. The Vice Presidents for Research of South Dakota State University and South Dakota School of Mines shall be permanent ex officio, voting members of the Board Members, unless replaced with alternate institutional representatives by the President of the University, and approved by the Member. The Presidents of South Dakota State University and South Dakota School of Mines and Technology, and South Dakota State University Growth Partnership, Ltd. shall serve as a permanent ex officio, non-voting member of the Board of Directors. A representative designated by (TBD upon conclusion of related negotiations) will be a permanent voting member of the Board of Directors for a period of thirty (30) years the corporation assuming operation of the South Dakota BioProcessing facility authorized by 2021 HB 1210. The Member or the Board of Directors may also designate additional ex officio members without vote as needed. The initial Board of Directors shall be the initial three Directors set forth in the Articles of Incorporation and additional directors nominated by the President of South Dakota State University or South Dakota School of Mines and Technology and approved by the Member. These Directors shall serve a one-year term as the Board of Directors.

Thereafter, all non-permanent appointed Directors shall be approved by the Member at the annual meeting of the Member from a slate of nominees submitted by the current Board of Directors directly or through a nominating committee under Article VI, Section 1, which may be supplemented by the Member.

Each Director shall hold office until his or her successor has been selected and qualified at the next regular annual meeting of the Board of Directors following the expiration of his term, unless such Director sooner dies, resigns, or is removed from the Board of Directors. After the initial one-year term for all directors, as close to as possible equal proportions of Directors shall be appointed to a one (1) year term; a two (2) year term and a three (3) year term, so that there are staggered terms.

Thereafter, each Director shall serve a three (3) year term. The Member shall approve selections of the remaining Board Members to fill vacancies as they arise upon death, resignation, removal, or expiration of term, and Directors may be reappointed any number of times, and upon expiration of a term, shall serve until the vacancy is filled.

ARTICLE V

Meetings of the Board of Directors

Section 1. The annual meeting of the Board of Directors shall be held at such time in the month of April in each year as may be designated from time to time by the Board of Directors and at the place, within or without the State of South Dakota, designated from time to time by the Board of Directors.

Section 2. Other regular meetings of the Board of Directors may be established by the Board of Directors. Such meetings may be held without notice at the principal office of this corporation or at such other place or places as the Board of Directors from time to time designate.

Section 3. Special meetings of the Board of Directors may be called at any time by (a) the Chair of the Board of Directors, or (b) by the Board of Directors, or (c) upon the written request of three or more members of the Board of Directors. Any person or group of persons entitled to call a special meeting of the Board of Directors may make a written request to the Secretary to call the meeting, and the Secretary shall give notice of the meeting, setting forth the time, place and purpose thereof, to be held between five and thirty days after receiving the request.

Section 4. Written notice of each annual meeting of the Board of Directors stating the time and place thereof shall, unless sent electronically pursuant to Article IV, Section 7 below, be mailed, postage prepaid, not less than five nor more than thirty days before the meeting, excluding the day of the meeting, to each director at his or her address according to the last available records of this corporation. No business shall be transacted at any special meeting other than the business specified in such notice. Any director may make written waiver of notice before, at, or after a meeting. The waiver shall be filed with the person who has been designated to act as Secretary of the meeting, who shall enter it upon the records of the meeting. Appearance at a

meeting is deemed a waiver unless it is solely for the purpose of asserting the illegality of the meeting.

Section 5. At all meetings of the Board of Directors, each director shall be entitled to cast one vote on any question coming before the meeting. The presence of a majority of the members of the Board of Directors shall constitute a quorum at any meeting thereof, but the directors present at any meeting, although less than a quorum, may adjourn the meeting from time to time. Except as otherwise provided by law or these Bylaws, majority vote of the directors present at any meeting, if there be a quorum, shall be sufficient to transact any business.

Section 6. When a meeting of the Board of Directors is adjourned to another time or place, notice of the adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Section 7. Any notices required to be provided hereunder by written notice may also be provided by electronic email to the noticed party's email address as listed in the records of the Corporation. Any action that could be taken at a meeting of the Board of Directors may be taken without a meeting when authorized in writing signed by all of the directors. The Directors may participate in a meeting of the Board or a Committee of the Board by means of conference call, tele video, or internet-based conferencing equipment, and such participation shall constitute presence in person at such meeting.

Section 8. Directors may be removed by the Member for cause, including incompetence, neglect of duty, or malfeasance in office.

Section 9. Any individual appointed to the Board of Directors or other corporate position may hold a concurrent position as a member, employee or officer of the Member, including a member, employee or officer also identified as representing the Member for the purposes of these Bylaws; and in such event, there shall be no liability on the part of any such individual for breach of any fiduciary obligation, to either the corporation or to the Member, arising from acts or omissions committed in good faith in reliance on the terms of this Agreement and the conditions of his or her appointment.

ARTICLE VI

Officers

Section 1. The officers of this corporation shall be a President, a Vice President, a Secretary-Treasurer and such other officers as the Board of Directors may from time to time designate. For purposes of presiding and conducting the meetings of the Board of Directors and serving as a spokesperson for the Board, the Vice President of Research for South Dakota State University shall serve as Chair of the Board of Directors. The Chair of the Board of Directors shall preside at meetings of the Board of Directors. Officers shall be elected by the Board of Directors to serve until their respective successors are chosen and have qualified. Any officer may at any time be removed by the Board of Directors with or without cause. The same person may hold

any two offices at the same time except the offices of (a) President and Vice President and (b) President and Secretary-Treasurer. The officers need not be directors of this corporation.

Section 2. The President shall be the chief executive officer of this corporation. He or she shall preside at all meetings of the Board of Directors in the absence of the Chair of the Board. He or she shall have general supervision, direction, and active management of the affairs of this corporation. He or she shall execute on behalf of this corporation all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized by the Board of Directors for the proper and necessary transaction of the business of the corporation.

Section 3. The Vice President shall perform the duties of the President in the case of the latter's absence or disability. The execution by the Vice President on behalf of this corporation of any instrument shall have the same force and effect as if it were executed on behalf of the corporation by the President.

Section 4. The Secretary-Treasurer shall record all proceedings of the meetings of the Board of Directors in a book to be kept for that purpose. He or she shall give or cause to be given all notices of meetings of the Board of Directors and all other notices required by law or by these Bylaws, and in case of his or her absence or refusal or neglect to do so, any such notice may be given by the President or Vice President.

The Secretary-Treasurer shall be the custodian of all books, correspondence, and papers relating to the business of this corporation. He or she shall join with the President or Vice President in the execution on behalf of this corporation of all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized to be so executed by the Board of Directors for the proper and necessary transaction of the business of this corporation.

The Secretary-Treasurer shall present at each annual meeting of the Board of Directors a full report of the transactions and affairs of this corporation for the preceding year and shall also prepare and present to the Board of Directors such other reports as it may desire and request at such time or times as it may designate.

The Secretary-Treasurer shall also have the custody of all the funds and securities of this corporation. When necessary and proper he or she shall endorse on behalf of this corporation all checks, drafts, notes and other obligations and evidences of the payment of money payable to this corporation or coming into his or her possession, and shall deposit the same, together with all other funds of this corporation coming into his or her possession, in such bank or banks as may be selected by the Board of Directors. He or she shall keep full and accurate account of all receipts and disbursements of this corporation in books belonging to the corporation, which shall be open at all times to the inspection of the Board of Directors. He or she shall from time to time make such other reports to the Board of Directors as it may require.

Section 5. Any officer of this corporation, in addition to the powers conferred upon him or her by these Bylaws shall have such additional powers and perform such additional duties as may be prescribed from time to time by said Board.

ARTICLE VII Committees

Section 1. The Board of Directors may act by and through such committees and advisory committees as may be specified in resolutions adopted by a majority of the directors in office. Each committee shall have such duties and responsibilities as are granted to it from time to time by the Board of Directors. Each such committee shall at all times be subject to the control and direction of the Board of Directors.

Section 2. The Board of Directors shall, by resolution adopted by a majority of the entire board, designate from among its members an Executive Committee consisting of three or more Directors, including the Chair of the Board of Directors. The Board of Directors may designate one or more Directors as alternate members of the Executive Committee, who may replace any absent member or members of the Executive Committee at any meeting thereof. In the interim between meetings of the Board of Directors, the Executive Committee shall have all the authority of the Board of Directors except to amend these Bylaws or as otherwise provided by law. All acts done and powers and authority conferred by the Executive Committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be certified as being, the act and under the authority of the Board of Directors. The Chairman of the Board, or the President in the absence of the Chairman of the Board, shall preside at all meetings of the Executive Committee. The Executive Committee shall elect from its members a chairman to preside at any meeting of the Executive Committee at which the Chairman of the Board and the President shall be absent. Two members of the Executive Committee shall constitute a quorum for the transaction of business.

Section 3. Each committee of this corporation may establish the time for its regular meetings and may change that time as it from time to time deems advisable. Special meetings of any committee of this corporation may be called by the chairman of that committee, or by the President. Two days' notice by mail, telephone, or telegraph shall be given of any special meeting of a committee. At all meetings of a committee of this corporation each member thereof shall be entitled to cast one vote on any question coming before such meeting. The presence of a majority of the membership of any committee of this corporation shall constitute a quorum at any meeting thereof, but the members of a committee present at any such meeting, although less than a quorum, may adjourn the meeting from time to time. A majority vote of the members of a committee of this corporation present at any meeting thereof, if there be a quorum, shall be sufficient for the transaction of the business of such committee.

ARTICLE VIII Fiscal Year and Statements

Unless otherwise fixed by the Board of Directors, the fiscal year of this corporation shall begin on July 1 and end on the succeeding June 30. To ensure the corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, or other purposes, periodic reviews shall be conducted, including fiscal audits. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits, if any, are reasonable, based on competent survey of information, and the result of arm's-length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to the corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

When conducting the periodic reviews, the corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE IX

Execution of Instruments, Deposits, and Funds

Section 1. The board of directors, except as otherwise provided in these bylaws, may by resolution authorize any officer or agent of the corporation to enter 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. Unless so authorized, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit to render it liable monetarily for any purpose or in any amount.

Section 2. Except as otherwise specifically determined by resolution of the board of directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the corporation shall be signed by any two officers of the corporation.

Section 3. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

Section 4. The board of directors may accept on behalf of the corporation any contribution, gift, bequest, or devise for the nonprofit purposes of the corporation subject to policies and procedures established by the board of directors.

ARTICLE X

Conflicts of Interest

The Corporation will maintain a conflict-of-interest policy approved by the Board of Directors and Member, to protect the tax-exempt corporation's interest when it is contemplating entering a transaction or arrangement that might benefit the private interest of an officer or director of the corporation or any "disqualified person" as defined by law. This policy is intended to supplement but not to replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations. Directors, members, of committees with delegated powers, have a duty to disclose all material facts to the Board of Directors when considering proposed transactions or arrangements. After disclosure of the financial interest and material facts, the Board of Directors will in absence of the interested person, determine whether a conflict of interest exists, whether the conflict can be mitigated and approve or deny the transaction with or without a conflicts management plan. Violations of this policy may result in corrective action.

ARTICLE XI Miscellaneous

Section 1. This corporation may have a corporate seal, which may be altered from time to time by resolution of the Board of Directors.

Section 2. These Bylaws may be amended from time to time in the manner prescribed by law. Notwithstanding the foregoing, without consent of the Member, Articles III and IV of these Bylaws may not be amended. A vote of dissolution of the corporation shall be considered an amendment of these bylaws and shall be subject to approval by and consent of the Member.

Section 3. If there is any conflict between the provisions of these bylaws and the articles of incorporation of this corporation, the provisions of the articles of incorporation shall govern. Should any or the provisions or portions of these bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these bylaws shall be unaffected by such holding. All references in these bylaws to the articles of incorporation shall be to the articles of incorporation, articles of organization, certificate of incorporation, organization charter, corporate charter, or other founding document of this corporation filed with an office of this state and used to establish the legal existence of this corporation. All references in these bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

Section 4. To the full extent permitted by any applicable law, this corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, wherever brought, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee, or member of a

committee of this corporation, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. Indemnification provided by this Bylaw shall be in addition to and independent of and shall not be deemed exclusive of any other rights to indemnification to which any person may be entitled by contract or otherwise under law. Indemnification provided by this Bylaw shall continue as to a person who has ceased to be a member of the Board of Directors, officer, employee or committee member, shall inure to the benefit of the heirs, executors and administrators of such person and shall apply whether or not the claim against such person arises out of matters occurring before the adoption of this Bylaw. However, any indemnification realized other than under this Bylaw shall apply as a credit against any indemnification provided by this Bylaw.

This corporation may, to the full extent permitted by applicable law from time to time in effect, purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, officer or employee or this corporation or a member of a committee of this corporation against any liability asserted against such person and incurred by such person in any such capacity.

Section 4. Notwithstanding anything herein to the contrary, it is the parties' intent that nothing in these Bylaws waives any applicable sovereign or Eleventh Amendment immunity of the Member, Board of Directors, or their agents, managers, employees, or persons operating through them.

Section 5. No part of the net earnings of this corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purpose of this corporation.

Section 6. No Substantial part of the activities of this corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and this corporation 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.

Section 7. Upon the dissolution of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation, shall be distributed for one or more exempt purposes as set forth in the Articles of Incorporation.

I, _____, one of the original incorporators and Chairman of the Board of Directors, hereby certify that the foregoing Bylaws were approved by the Board of Directors of Dakota Bioproducts Innovation Institute as of the ____ day of _____, 2021.

Daniel Scholl, Chair of Board of Directors

DRAFT