

Affiliation Agreement Renewals
FINANCE AND AUDIT COMMITTEE

May 4, 2016

As approved by the Board of Visitors, the university has entered into affiliation agreements with the following university-related corporations for the purpose of defining the relationship and requirements of university-related corporations.

- Virginia Tech Alumni Association, Inc.
- Virginia Tech Athletic Fund, Inc.
- Virginia Tech Corps of Cadets Alumni, Inc.
- Virginia Tech Foundation, Inc.
- Virginia Tech Intellectual Properties, Inc.
- Virginia Tech Services, Inc.
- Virginia Tech Applied Research Corporation, Inc.
- Virginia Tech Innovation Corporation, Inc. (formerly VT Technology Services and Operations Corporations)

The terms of these agreements end on June 30, 2016. It is recommended that the agreements be renewed at this time to be extended for a term ending June 30, 2020.

RECOMMENDATION: That the affiliation agreements listed above be revised according to the attached template and extended for a four-year period, terminating on June 30, 2020.

June 6, 2016

**AFFILIATION AGREEMENT BETWEEN
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
AND
(CORPORATION)**

THIS AFFILIATION AGREEMENT, dated as of _____, is by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, a Virginia public corporation (the "UNIVERSITY"), and (corporation), a Virginia non-stock corporation (the "CORPORATION").

RECITALS

1. The University recognizes the contribution the Corporation will make to the University's missions and goals and, therefore, the University is willing to be affiliated with and provide certain benefits to the Corporation. Such action shall not, however, be construed to mean that the Corporation is part of or controlled by the University; that the University is responsible for the Corporation's contracts or other acts or omissions; or that the University approves of the Corporation's activities.
2. The purpose of this Agreement is to describe the entire relationship between the University and the Corporation including the University benefits the Corporation may receive and the conditions for their receipt.

Accordingly, the parties agree as follows:

a. Representations

- 1) The Corporation represents that it is a Virginia non-stock corporation in good standing with the Virginia State Corporation Commission. The Corporation will provide the University its current articles of incorporation, bylaws and all future amendments, a list of all directors, administrators and offices, and their addresses and phone numbers.
- 2) The Corporation further represents that the officers and board members of the Corporation were provided a copy of this Agreement and they authorized the person executing this Agreement on behalf of the Corporation to execute this Agreement.

b. Relationship between the Corporation and the University

The University is a Virginia public corporation and the Corporation is not part of that corporation, but rather exists and operates independently, and for the benefit of, the University.

The Corporation is required to distribute to the University or its designee, on a regular basis, any surplus revenues as determined in conjunction with the Chief Financial Officer of the University or any successor thereof.

Annually, prior to consideration by its Board of Directors, the Corporation shall review its annual operating budget, capital budget, long-term program plans, and intended distribution of surplus with the University's designee.

The Corporation agrees that, without the prior written consent of the University President, it will not distribute any assets or proceeds thereof, other than in the ordinary course of business, to any entity or person other than the University or its designee.

The Corporation shall convey to the University upon written request of the Board of Visitors, any interest in real property owned by the Corporation, which real property is and shall be indirectly owned by the University.

The Corporation shall provide a benefits and compensation plan for its employees that as nearly as practicable matches that of the University. For business related reasons, the Chief Financial Officer of the University may authorize exceptions to this provision.

The President of the University shall designate a person to be elected as a director and member of the Executive Committee of the Corporation.

The parties understand and agree that this Agreement is the only source of control the University may have over the Corporation or its activities except to the extent, if any, the University chooses to exercise control over activities occurring on its property and as provided in the governing documents of the Corporation.

c. Fund-Raising Activities

The Corporation agrees not to conduct fund-raising activities without the prior written consent of the University, provided that the solicitation of governmental grants and research contracts by the Corporation shall not be considered fund-raising activities for purposes of this Agreement.

d. The Corporation's Dealings with Third Parties

The Corporation shall not hold itself out as being part of, controlled by, or acting on behalf of the University. The Corporation agrees to take reasonable measures to ensure that third parties understand that it is not part of the corporation which is the University. With respect to advertising, publicity, correspondence, contracts, and other formal means of communication, the Corporation will use its full corporate name to avoid confusion on the part of the third parties.

e. Tax Matters

The Corporation shall prepare and timely file all tax returns and reports including information returns required to be filed by it under federal, state and local laws. The Corporation will promptly advise the University in the event of any audit of its tax returns or reports by any governmental entity. The Corporation shall not use the University's taxpayer identification number or the University's tax-exempt status in connection with purchases or sales by the Corporation, gifts to the Corporation, interest or other income of the Corporation, or any other activity of the Corporation.

f. Liability Insurance and Defense

The Corporation understands and agrees that the University, the Commonwealth of Virginia, and the employees and agents of either will not be liable for any of the Corporation's contracts, torts, or other acts or omissions, or those by the Corporation's directors, officers, employees or staff, provided that the limitations of liability provided herein shall not apply to faculty and staff of the University acting within the scope of their employment with the University. The Corporation understands and agrees that neither it nor its directors, officers, employees or staff are protected by the University's or the Commonwealth of Virginia's insurance policies or self-insurance plans in connection with the Corporation's activities, and the University and the Commonwealth will not provide any legal defense for the Corporation or any such person in the event of any claim against any of them, provided that the limitations of liability provided herein shall not apply to faculty and staff of the University acting within the scope of their employment with the University.

g. Non-Discrimination

The Corporation agrees to follow the University's Equal Opportunity and Affirmative Action Statement.

h. Charges for Services

The Corporation agrees to reimburse the University upon request for the costs of services provided. To the extent that a rate schedule exists for these services, the Corporation will be charged at the appropriate rate. To the extent there is no rate schedule charge set for a service, the Corporation will be charged a rate to be mutually agreed on by the University and the Corporation based on a cost study to be conducted by the University Controller's Office.

i. Use of Facilities, Resources and Services

The University hereby makes the Corporation eligible to use the University's facilities, resources and services, subject to availability and the policies and procedures of the University applicable to such facilities, resources and services. The Corporation may utilize the University's name and registered marks in accordance with University policy and guidelines on the use of such name and marks. The University may utilize the Corporation's name and registered marks in accordance with Corporation's policy and guidelines on the use of such name and marks.

j. Audit

The Corporation shall have an annual audit performed by an independent auditor and shall provide copies of its IRS form 990 or 990T, financial statements, management letter and management response produced in connection with the audit to the President of the University. The Corporation agrees to participate in the university-related corporation internal audit program. All costs of both the annual audit and the internal audit work performed for the Corporation shall be paid by the Corporation. The Corporation will be exempted from the requirement for annual external audit provided that:

- the Corporation has not held any financial assets for the twelve month period preceding the fiscal year ending date,
- the officers of the Corporation certify annually that no financial activities or transactions have occurred or are occurring outside those reflected in the records of the Corporation,
- on an as needed basis, the Corporation agrees to provide as a supplement to its annual financial statements separate unaudited financial schedules providing information on the activities of the Corporation recorded in its records, and
- the Corporation continues to participate in the university-related corporation internal audit program.

k. Subsidiary Corporations

Approval of the University's Board of Visitors is required for the establishment of University related corporations. University related corporations may establish subsidiaries and/or LLC's and the provisions of this agreement shall be applicable to them.

I. Dissolution

If the University, acting at the direction of its Board of Visitors, shall request in writing, the Corporation agrees to timely cease all operations and take all appropriate actions to dissolve the Corporation. In the event of such dissolution or final liquidation of the Corporation (a) none of the property of the Corporation or any proceeds thereof shall be distributed to or divided among any of the officers or directors of the Corporation or inure to the benefit of any individual; and (b) after all liabilities and obligations of the Corporation have been paid, satisfied, and discharged, or adequate provision made thereof, all remaining property of the Corporation and the proceeds thereof shall be distributed by the Board of Directors of the Corporation to the University or its designee provided such designee is an organization or organizations that is (are) qualified under Section 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended.

m. Term and Termination of Agreement

This agreement shall become effective upon execution by both parties and shall expire on June 30, 2020, but it will remain in effect past the expiration date unless (i) terminated by the University, with or without cause, at any time by written notice to the Corporation, (ii) terminated by mutual written agreement of the parties, or (iii) replaced by a new agreement.

n. Waiver

Failure of either party to enforce any of the provisions of this Agreement shall not be construed as a waiver of that, or any other, provision or any later breach thereof.

o. Notices

Any notice under this Agreement shall be deemed given when deposited in the mail, postage prepaid, and addressed as follows:

If to the Corporation:

If to the University:

Chief Financial Officer
Virginia Tech
210 Burruss Hall (0174)
Blacksburg, Virginia 24061

or to such other person, at such addresses, as either party may designate for itself and so notify the other party in writing.

p. Entire Agreement; Amendments.

This Agreement constitutes the entire agreement between the Corporation and the University concerning the subject matter, and it supersedes all prior written or oral agreements concerning this subject matter. This Agreement may not be amended except by written document executed by both parties.

IN WITNESS THEREOF, the parties have executed this Agreement below:

(NAME OF CORPORATION)

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: _____
(Authorized Officer)

By: _____
(Authorized Officer)

Title: _____

Title: _____

Date: _____

Date: _____