

**Resolution to Create a New University-Related Corporation
and Affiliation Agreement**

FINANCE AND RESOURCE MANAGEMENT COMMITTEE

October 17, 2022

Background

Virginia Tech's strategic priorities include advancing regional, national, and global impact through the preparation of graduates to contribute and lead in a complex world by offering person-centered and purpose-driven student experiences designed to education the whole person. One milestone is to ensure 50% of academic degrees have a required experiential learning component by 2026-2027. Study Abroad is one type of experiential learning and provides students educational opportunities abroad that result in progress toward an academic degree at Virginia Tech.

Primarily supporting its architecture study abroad programs, the university opened the Center for European Studies and Architecture in 1994, and subsequently entered a Management Services Agreement with a purpose created foundation to operate the facilities owned by the Virginia Tech Foundation and oversee management of the university's programs located in Riva San Vitale in Southern Switzerland. Subsequently renamed the Steger Center for International Scholarship (Center), the Center is the university's European center and base for operations and support of its programs in the region.

Under the direction and oversight of the Office of the Vice President for Outreach and International Affairs and in conjunction with academic deans and Virginia Tech faculty, the university continues to offer study abroad programs for several disciplines at the Center requiring local oversight and administration of facilities and operations. Due to its limited scope, the university exercised the termination clause in The Olivio Ferrari Foundation Management Services Agreement effective December 31, 2022, and desires to support the creation of an independent Swiss corporation as a university-related corporation to manage the operations and programs at the Steger Center beginning January 1, 2023. Due to the regulatory requirements that accompany employment and contracts in foreign countries, the management of the Center cannot be accomplished within the university environment.

The primary purpose of the new affiliated corporation is to perform management services in support of fulfilling Virginia Tech's mission in offering experiential learning opportunities for undergraduate and graduate students engaged in semester and summer programs at the Steger Center. The affiliated corporation will promote the interdisciplinary study of Europe in its entirety and will expose and equip students with knowledge and skills through teaching, learning, mentorship, and experiential learning programs by engaging

with scholars and policy makers in Switzerland and throughout the whole of Europe. The Office of the Vice President for Outreach and International Affairs will collaborate with Virginia Tech faculty and affiliated staff to advance the scholarship and global reach of the university by organizing research symposia during summer months when academic programs are not in session.

The new entity will receive oversight from a board composed of directors from the Virginia Tech Foundation, Virginia Tech, as well as affiliated Swiss Citizen(s) with residency status in Switzerland. The board will be chaired by the vice president for Outreach and International Affairs.

**RESOLUTION TO CREATE A NEW UNIVERSITY-RELATED CORPORATION
AND AFFILIATION AGREEMENT**

WHEREAS, Virginia Tech opened the Center for European Studies and Architecture in 1994, and subsequently entered a management services agreement with The Olivio Ferrari Foundation, a registered Swiss entity, to operate the facilities and oversee management of its programs; and

WHEREAS, the Center, subsequently renamed the Steger Center for International Scholarship in 2014, located in Riva San Vitale in Southern Switzerland is the university's European center and base for operations and support of its programs in the region; and

WHEREAS, Virginia Tech continues to offer study abroad programs at the Steger Center requiring local oversight and administration of facilities and operations; and

WHEREAS, Virginia Tech exercised the termination clause in The Olivio Ferrari Foundation Management Services Agreement effective December 31, 2022; and

WHEREAS, the University desires to support the creation of an independent Swiss corporation as a university-related corporation to manage the operations and programs at the Steger Center beginning January 1, 2023; and

WHEREAS, the corporation's relationship to the University will be governed by an affiliation agreement, a draft of which is attached for review and approval by the Board of Visitors;

NOW, THEREFORE, BE IT RESOLVED that the Board of Visitors authorizes, at the President's discretion, to support the establishment of a Swiss Corporation, VT Swiss SA, as a university-related corporation and approves the affiliation agreement thereof with the University.

RECOMMENDATION:

That the resolution to support the establishment of the Swiss Corporation, VT Swiss SA, as a university-related corporation and the affiliation thereof with the university, at the President's discretion, be approved.

November 14, 2022

ATTACHMENT A

**DRAFT AFFILIATION AGREEMENT BETWEEN
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
AND VT SWISS SA**

THIS AFFILIATION AGREEMENT ("Agreement"), dated as of January 1, 2023, is by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, a Virginia public corporation (the "University"), and VT Swiss SA, a SWISS corporation, including each of its possible subsidiaries (the "Corporation"). The University and the Corporation are collectively referred to herein as the "Parties."

RECITALS

- a. The University is an agency of the Commonwealth of Virginia that was established in 1872 for the purpose of providing higher education.
- b. The Corporation is a Swiss corporation that was established notably to support and benefit the University and exists and operates as a separate, independent entity with its own officers and governing board.
- c. The Corporation was created for the purpose of provision of services, in particular administrative, accommodation, management, and organizational services concerning educational, academic, and teaching programs and activities, notably in relation to the Steger Center for International Scholarship in Riva San Vitale and abroad. The Corporation can purchase real estate and hold participations in other companies-----.
- d. The University acknowledges the contributions that the Corporation makes to advance the University's mission and goals, and desires to be affiliated with the Corporation to make available certain facilities, resources, and services to the Corporation for its use.
- e. The University and the Corporation desire to set forth the basic terms of their relationship.

NOW, THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Relationship between the Parties**

(a) Pursuant to Section 23.1-2601 of the Code of Virginia, the University is a state agency and is a Virginia public corporation.

(b) The Corporation is a separately incorporated Swiss corporation.

(c) The University is responsible for the compensation and evaluation of all University personnel. The Corporation is responsible for the compensation and evaluation of all its personnel.

(d) The Corporation agrees that it will provide the University with (i) a copy of its articles of incorporation and bylaws, as well as any amendments to such organizational documents; and (ii) a list of all directors, officers, and staff members and their relevant contact information including e-mail addresses and telephone numbers, in compliance with applicable data protection provisions. The Corporation also agrees that it will share its annual operating budget, capital budget, and long-term program plans with the University before presenting any such budgets or plans. The University acknowledges, however, that the Corporation, and the Corporation's Board has full power and authority with respect to such budgets and plans.

(e) The Corporation agrees that it shall remain in good standing in Switzerland.

(f) The President of the University, or his or her designee, shall be responsible for communicating to the Corporation the University's priorities and strategic and long-term plans, as approved by the University's Board of Visitors.

2. **Corporation Board**

(a) The Corporation is an independent Swiss corporation. The authority to appoint the members of the Board of Directors lays with the General assembly of the Corporation, in accordance to Swiss law and its articles of incorporation.

(b) The Corporation 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.

3. **Fundraising Activities**

The Parties acknowledge that the University is responsible for any fundraising activities of the University. The Corporation will continue to support the University's fundraising efforts. Notwithstanding the foregoing, the solicitation of governmental grants and research contracts by the Corporation shall not be considered fundraising activities.

4. **Dealings with Third Parties**

(a) The University and the Corporation acknowledge that each is an independent entity, separate from the other, and neither shall hold itself out as being part of, controlled by, or acting on behalf of the other. Both Parties agree to take reasonable measures to ensure that third parties understand that the University and the Corporation are separate and independent entities. With respect to marketing, 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. All correspondence, solicitations, activities, and advertisements concerning the Corporation shall reflect the Corporation, the University, and the relationship between them appropriately.

(b) The Corporation shall prepare and timely file all of its tax returns and reports including information returns required under applicable laws.

5. **Liability Insurance and Defense**

The Parties acknowledge 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 other staff, provided, however, that the limitations of liability stated herein shall not apply to faculty and staff of the University acting within the scope of their employment with the University. Further, the Parties acknowledge that neither the Corporation 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.

6. **Non-Discrimination**

The Corporation agrees that it shall maintain a non-discrimination policy that is consistent with the University's Equal Opportunity/Affirmative Action Statement.

7. **Charges for Services**

The Parties agree to reimburse each other for services provided. To the extent that a rate schedule exists for these services, the appropriate rate will be charged. To the extent there is no rate schedule charge set for a service, the charged rate will be mutually agreed upon by the University and the Corporation. All business transactions shall be entered into by each side freely and independently.

8. Use of Facilities, Resources, Services, and Marks

(a) The University agrees that the Corporation is eligible to use the University's facilities, resources, and services (other than legal counsel), subject to availability and the policies and procedures of the University applicable to such facilities, resources and services.

(b) The University may accord the Corporation's personnel certain privileges related to the use of services and facilities generally available to University employees, subject to a separate written agreement between the Parties.

(c) Each Party grants, and the other accepts, a non-exclusive, non-transferrable royalty-free right and license to use the other's names and marks in connection with their operations, including as part of their names.

(d) The Corporation agrees that the use of such names and marks will comply with University brand standards. The Corporation agrees that, in any creative work produced directly or indirectly for the Corporation, as it relates to any University marks, the creative work's end application will fit the visual look and feel of the overall brand aesthetic and brand concept and will correctly use all University marks including logos and identity components. Creative work will include, but is not limited to websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print).

(e) Nothing in this Agreement gives the other party any other right, title, or interest in the licensed marks, which remain the sole property of the other.

9. Audit

The Corporation at its expense shall have an annual audit performed by an independent auditor and the results should be reported to the corporate board. The Corporation shall rotate audit firms or the audit engagement leadership every five years or in accordance with Swiss accounting regulations. The Corporation shall provide copies of its financial statements and communications to management related to internal controls produced in connection with the audit to the Executive Vice President and Chief Operating Officer of the University.

10. No Partnership or Joint Venture

No provision of this Agreement shall be deemed to create a partnership or joint venture between the University and the Corporation.

11. Dissolution

Should the Corporation cease to exist the Corporation, its assets will be liquidated in compliance with the applicable Swiss law provisions.

12. Term and Termination of Agreement

This Agreement shall become effective upon execution by both Parties and shall expire on June 30, 2024, but it will remain in effect past the expiration date unless (i) terminated by either Party, with or without cause, upon 90 days' prior written notice to the other, (ii) terminated by mutual written agreement of the Parties, or (iii) replaced by a new agreement.

13. 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.

14. 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:

President

With a copy to:

Andrea Gamba
MAG Legis SA
Studio legale
Via G. B Pioda 14
CH- 6900 Lugano

If to the University:

Executive Vice President and Chief Operating Officer
Virginia Tech
210 Burruss Hall
Blacksburg, Virginia 24061

With a copy to:

University Legal Counsel

Virginia Tech

236 Burruss Hall

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.

15. 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.

[Signatures Follow on Next Page]

DRAFT

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date written above.

VT SWISS SA

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: _____
(Authorized Officer)

By: _____
(Authorized Officer)

Title: Chairman of the Board

Title: President

DRAFT