

**Revisions to and Renewal of University-Related Corporations Affiliation Agreements****FINANCE AND RESOURCE MANAGEMENT COMMITTEE****August 9, 2024**

In accordance with the Board of Visitors Bylaws, "Article III-Related Corporations," and as previously 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 the university-related corporations. Each corporation has its own board.

- Virginia Tech Alumni Association
- Virginia Tech Applied Research Corporation
- Virginia Tech Athletic Fund, Inc.
- Virginia Tech Corps of Cadets Alumni, Inc.
- Virginia Tech Foundation, Inc.
- Virginia Tech India Research & Education Forum
- Virginia Tech Innovations Corporation
- Virginia Tech Intellectual Properties, Inc.
- Virginia Tech Services, Inc.

The terms of these agreements expired on June 30, 2024, but remain in effect until replaced by a new agreement. In accordance with the Board of Visitors Bylaws, revisions to the format for these agreements as highlighted below are recommended:

- Incorporate requirements of the University-Related Corporations Audit Resolution approved by the Board of Visitors on March 31, 2008.
- Upon request by the university, each university-related corporation will review its annual operating budget, capital budget, and long-term program and funding plans, including any planned issuance or use of indebtedness, with the university before presenting any such budgets or plans to its board.
- A university-related corporation is a covered entity under the university's obligation to identify and report to the federal government financial support from foreign sources. The university-related corporation will coordinate with the university and its departments to report gifts and contracts received for the benefit of the university in accordance with university procedures.

See Attachment A for the proposed format changes and additions.

The proposed resolution authorizes the university to revise agreements for each university-related corporation with a term ending June 30, 2028 in the revised format as adjusted for any specific affiliation negotiations, applicable laws and regulations.

**RESOLUTION FOR REVISIONS TO AND RENEWAL OF UNIVERSITY-RELATED CORPORATION AFFILIATION AGREEMENTS**

**WHEREAS**, on May 29, 2020, the Board of Visitors approved renewal of affiliation agreements with the following university-related corporations for the purpose of defining the relationship and requirements of the university-related corporations.

- Virginia Tech Alumni Association
- Virginia Tech Applied Research Corporation
- Virginia Tech Athletic Fund, Inc.
- Virginia Tech Corps of Cadets Alumni, Inc.
- Virginia Tech Foundation, Inc.
- Virginia Tech India Research & Education Forum
- Virginia Tech Innovations Corporation
- Virginia Tech Intellectual Properties, Inc.; and
- Virginia Tech Services, Inc.

**WHEREAS**, the terms of these agreements expired on June 30, 2024, but remain in effect until replaced by a new agreement; and

**WHEREAS**, each corporation has its own board; and

**WHEREAS**, the revisions to the format for these agreements as highlighted below:

- Incorporate requirements of the University-Related Corporations Audit Resolution approved by the Board of Visitors on March 31, 2008
- Upon request by the university, each university-related corporation will review its annual operating budget, capital budget, and long-term program and funding plans, including any planned issuance or use of indebtedness, with the university before presenting any such budgets or plans to its board
- A university-related corporation is a covered entity under the university's obligation to identify and report to the federal government financial support from foreign sources. The university-related corporation will coordinate with the university and its departments to report gifts and contracts received for the benefit of the university in accordance with university procedures; and

**WHEREAS**, the Board of Visitors has the authority to authorize such revisions and affiliations,

**NOW, THEREFORE BE IT RESOLVED**, that revised agreements be extended for each university-related corporation with a term ending June 30, 2028 in the revised format as adjusted for any specific affiliate needs, applicable local laws and regulations.

**RECOMMENDATION:**

That revised agreements be extended for each university-related corporation with a term ending June 30, 2028 in the revised format as adjusted for any specific affiliate needs, applicable local laws and regulations, be approved.

August 28, 2024

**AFFILIATION AGREEMENT BETWEEN  
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY AND  
“UNIVERSITY-RELATED CORPORATION NAME”**

THIS AFFILIATION AGREEMENT ("Agreement"), dated as of “Month Day”, 2024, is by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, a Virginia public corporation (the "University"), and “University-Related Corporation Name”, a Virginia (or “Other State/Country”) nonstock corporation, including each of its 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 Virginia (or “Other State/Country”) nonstock corporation that was established in (“Year”) 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 “Corporation’s Business Purpose”.
- d. The Corporation is a tax-exempt charitable organization under Section 501(c)(3) of the United States Internal Revenue Code (or “Other Legal Structure”).
- e. The University acknowledges the contributions that the Corporation makes to advance the University's mission and goals, and desires ~~to be affiliated an~~ with affiliation with the Corporation to make available certain facilities, resources, and services to the Corporation for its use.
- f. 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 Virginia (or “Other State/Country”) nonstock corporation and is an organization described in Internal Revenue Code section 501(c)(3) (or “Other Legal Structure”).

(c) 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.

(d) 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. The Corporation agrees that it shall endeavor to provide a benefits and compensation plan for its employees that as nearly as practical matches that of the University.

(e) 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. —The Corporation also agrees that, upon request by the University, it will review its annual operating budget, capital budget, and long-term program and funding plans, including any planned issuance or use of indebtedness, with the University before presenting any such budgets or plans to its Board. The University acknowledges, ~~however,~~ that the Corporation's Board has full power and authority with respect to ~~such budgets~~the Corporation's annual operating budget, capital budget, and long-term program and plans, including any planned issuance of use of indebtedness. Both parties also acknowledge the importance of considering impacts to and limitations on the University's debt rating when making financial decisions, ensuring alignment with the University's financial objectives, its goal of maintaining favorable borrowing terms and capacity, and its ability to meet the Commonwealth's debt rating standards required of covered institutions pursuant to Virginia's Higher Education Restructuring Act. Additionally, the Corporation will adhere to predefined parameters and guidelines set forth by its Board, and available for review by the university upon request, in making decisions related to debt issuance or utilization, ensuring responsible and strategic financial management.

(f) The Corporation agrees that it shall remain in good standing with the Virginia State Corporation Commission (if Virginia Corporation).

(g) 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 Virginia (or “Other State/Country”) corporation with authority to appoint directors to serve on its Board in accordance with its articles

of incorporation and bylaws. The Parties agree, however, that the President of the University, or the President's designee, shall serve as a Corporation director and member of the Corporation's Executive Committee.

(b) The Corporation represents that the officers and board members of the Corporation were provided a copy of this Agreement and ~~its Board~~they authorized the person executing this Agreement on behalf of the Corporation to execute this Agreement.

(c) The Corporation agrees to provide, upon request by the University, a listing of the board members and officers of the Corporation annually.

(d) The Corporation agrees to provide, upon request by the University, copies of the approved minutes of all regular and special meetings of the Corporation's Board.

### 3. Fundraising Activities

The Parties acknowledge that the University is responsible for any fundraising activities of the University. The Corporation, as appropriate, 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 federal, state, and local laws. At the request of the Vice President for Finance and Chief Financial Officer, the Corporation shall provide copies of tax returns and reports that are publicly available information. The Corporation shall use its taxpayer identification number and its tax-exempt status in connection with purchases and sales by the Corporation, gifts to the Corporation, interest, and other income of the Corporation, and any other activity of the Corporation.

## 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 the cost of 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 the University's~~ names and marks will comply with University brand standards. The Corporation agrees that, in any creative work produced directly or ~~indication-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. Accounting Reports

(a) The books and records of the Corporation shall be kept in accordance with generally accepted accounting principles.

(b) The Corporation shall provide to the Vice President for Finance and Chief Financial Officer a copy of the annual audited financial statements of the Corporation.

(c) The Corporation shall promptly disclose to the University any foreign gifts or contracts received on behalf or for the benefit of the University. This disclosure shall include all necessary information required for compliance with federal regulations, including but not limited to the amount, source, and purpose of the gift or contract.

## 10. Audit

(a) The Corporation shall have an Audit Committee, which reports to the Board of Directors of the Corporation, and which is comprised of individuals who are independent and separate from those who manage or administer the Corporation. Minutes from the Audit Committee meetings of the Corporation will be provided, upon request by the University.

(b) The Corporation at its expense shall have an annual audit performed by an external independent Certified Public Accountant (CPA) firm, and within six months of the Corporation's fiscal year end, shall provide copies to the University of its audited financial statements and management letter indicating any auditor concerns, if any, regarding financial and management matters, and suggestions for correction.

(c) The Audit Committee shall evaluate rotating the independent CPA firm or the audit team if a new CPA firm is not selected at least every five years.

(d) The chairman of the Audit Committee of the Corporation shall file an annual certification letter with the University stating that the procedures in (a)-(c) above have been followed.

(e) 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.

### **Audit**

~~The Corporation at its expense shall have an annual audit performed by an independent auditor, and shall provide copies of its financial statements, and related documents, produced in connection with the audit to the Senior Vice President and Chief Business Officer 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.~~

### **4011. 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.

### **4412. Dissolution**

Should the Corporation cease to exist or cease to be an organization described in Section 501(c)(3) of the Internal Revenue Code, the Corporation will transfer its assets to the University, or if it is no longer in existence to the Commonwealth of Virginia, any one or more affiliated entities with the University that are organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code. If none of the University or its affiliated entities are then so described, the Corporation will distribute its assets and property to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of Sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code. The Corporation agrees to transfer such assets and property in a manner that furthers the best interests of the University, as determined by its Board in consultation with the University.

### **4213. Term and Termination of Agreement**

This Agreement shall become effective upon execution by both Parties and shall expire on June 30, ~~2024~~2028, 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.

### **4314. 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.

#### **4415. 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  
"Address"

##### If to the University:

President  
Virginia Tech 210 Burruss Hall  
Blacksburg, Virginia 24061

~~Senior Executive~~ Vice President and Chief ~~Business 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.

#### **4516. 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.

#### **4617. Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Virginia, regardless of its choice of law doctrine.

**[Signatures Follow on Next Page]**

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

“UNIVERSITY-RELATED CORPORATION”

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

By: \_\_\_\_\_  
(Authorized Officer)

By: \_\_\_\_\_  
(Authorized Officer)

Title: Chief Executive Officer

Title: President