

Approval to Adjust the Virginia Tech Applied Research Corporation, Inc Affiliation Agreement

FINANCE AND RESOURCE MANAGEMENT COMMITTEE

August 6, 2020

As approved by the Board of Visitors, the university has entered into affiliation agreements with university-related corporations for the purpose of defining the relationship and requirements of university-related corporations. At the June 2, 2020 Board of Visitors meeting the Affiliation Agreements for the following university-related corporations were approved for a term ending June 30, 2024.

- 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 Innovations Corporation, Inc.
- Virginia Tech India Research & Education Forum

For business related reasons, at the request of the Corporation, the affiliation agreement for the Virginia Tech Applied Research Corporation, Inc has been adjusted to reflect the agreed upon exception that may be granted by the Senior Vice President and Chief Business Officer to the provision outlined in 1(d) of the attached red-line version of the agreement.

RECOMMENDATION: That the attached adjusted affiliation agreement for the Virginia Tech Applied Research Corporation, Inc. be approved.

August 25, 2020

**AFFILIATION AGREEMENT BETWEEN
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY AND
VIRGINIA TECH APPLIED RESEARCH CORPORATION**

THIS AFFILIATION AGREEMENT ("Agreement"), dated as of July 1, 2020, is by and between VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, a Virginia public corporation (the "University"), and VIRGINIA TECH APPLIED RESEARCH CORPORATION, a Virginia 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 nonstock corporation that was established in 2009 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 promoting the welfare of the University by delivering superior analytic and technology solutions to government and non-government customers, extending the brand and impact of the Virginia Tech research and innovation enterprise.
- d. The Corporation is a tax-exempt charitable organization under Section 501(c)(3) of the United States Internal Revenue Code.
- e. 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.
- 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 nonstock corporation and is an organization described in Internal Revenue Code section 501(c)(3).

(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. For business related reasons, at the request of the Corporation, the Senior Vice President and Chief Business Officer of the university may authorize exceptions to this provision.

(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 it will review its annual operating budget, capital budget, and long-term program plans 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 and plans.

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

(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 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 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 federal, state, and local laws. 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 names and marks will comply with University brand standards. The Corporation agrees that, in any creative work produced directly or indication 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 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.

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 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.

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
Virginia Tech Applied Research Corporation
900 N. Glebe Road, 7th Floor
Arlington, Virginia 22203

If to the University:

President
Virginia Tech 210 Burruss Hall
Blacksburg, Virginia 24061

Senior Vice President and Chief Business 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.

16. 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.

VIRGINIA TECH APPLIED
RESEARCH CORPORATION

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: _____
(Authorized Officer)

By: _____
(Authorized Officer)

Title: Chief Executive Officer

Title: President