

**INDUSTRIAL AFFILIATE PROGRAM AGREEMENT**

**Between**

**The Energy and Materials Initiative (EMI) at Virginia Polytechnic Institute and State University**

**And** \_\_\_\_\_

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 201\_ by and between **Virginia Polytechnic Institute and State University**, a Virginia nonprofit institute of higher education with offices at North End Center, Suite 4200, 300 Turner Street NW, Blacksburg, VA 24061 (hereinafter referred to as “University” or “Virginia Tech”) and \_\_\_\_\_, a corporation with offices at \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as “Affiliate”)

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industrial Affiliate Program for the **Energy and Materials Initiative (EMI)** (hereinafter called "EMI") at the University, the parties hereby agree to the following terms and conditions:

**Article 1: Membership**

1. Affiliate agrees to pay an annual fee for one of the categories as indicated below:

_____	Full Board Member	\$100,000
_____	Half Board Member	\$50,000
-----	Observer	\$25,000

Payment of these fees in lump sum due on January 31 of each year shall be made to the **Treasurer, Virginia Tech** and mailed to:

Office of Sponsored Programs  
North End Center, Suite 4200  
300 Turner Street NW  
Blacksburg, VA 24061

Because research of the type to be done by EMI takes time and research results may not be obvious immediately, Affiliate should join EMI with the intention of multiple years of sponsorship. This Agreement is presumed to renew itself each year with the payment of the annual fee, which will be invoiced to Affiliate in January of each year. However, Affiliate may terminate this Agreement by giving University 90 days written notice prior to the termination date.

2. Member Benefits

**Full Board Members** shall be entitled to the following benefits:

- Recognition on the EMI website as a research Member
- Early access to research results from Membership sponsored research. Copies of the reports, papers, theses, and dissertations produced as a result of the EMI will be distributed to all Members free of charge via the EMI website.
- Opportunity to interact with students in the EMI for purposes of research activities and recruitment.
- 10 Votes for the project selection at the industry advisory board (IAB) meeting
- Direct one specific project each year. Project will be presented at the IAB meeting.
- Eligible to become chair of the board. Chair election will occur on an annual basis at the IAB meeting.
- On a space available basis, and at the discretion of Virginia Tech and subject to Virginia Tech facilities use policies, opportunities may exist for temporary use of space in the EMI offices, for Members who are actively participating in EMI collaborative projects.
- Personal meeting with the EMI Director once per year to discuss research initiatives, progress, and priorities of EMI.

**Half Board Members** shall be entitled to the following benefits:

- 5 Votes for the project selection at the IAB meeting
- Early access to research results from Membership sponsored research. Copies of the reports, papers, theses, and dissertations produced as a result of EMI will be distributed to all Members free of charge via the EMI website.
- Opportunity to interact with students in the EMI for purposes of research activities and recruitment.
- Direct one specific project each year. Project will be presented at the IAB meeting.
- On a space available basis, and at the discretion of Virginia Tech and subject to Virginia Tech facilities use policies, opportunities may exist for temporary use of space in the EMI offices, for Members who are actively participating in EMI collaborative projects.
- Personal meeting with the EMI Director once per year to discuss research initiatives, progress, and priorities of EMI.

**Observer Members (for-profit small business with less than 50 employees)** shall be entitled to the following benefits:

- Early access to research results from Membership sponsored research. Copies of the reports, papers, theses, and dissertations produced as a result of EMI will be distributed to all Members free of charge via the EMI website.
- Opportunity to interact with students in the EMI for purposes of research activities and recruitment.
- Personal meeting with the EMI Director once per year to discuss research initiatives, progress, and priorities of EMI

## **Article 2: Publications and Intellectual Property**

1. **Publications.** University reserves the right to publish in scientific or engineering journals the results of any research performed by EMI after providing the Affiliate with a thirty (30) day period in which to review each publication to identify patentable subject matter and to identify any inadvertent disclosure of the Affiliate's Proprietary Information. If necessary to permit the preparation and filing of U.S. patent applications, EMI may agree to an additional review period not to exceed sixty (60) days. Any further extension will require subsequent written agreement between the Affiliate and Virginia Tech. Failure to provide comments during the review period will be de facto agreement to publication.
2. **Rights in Intellectual Property.** Intellectual property, whether or not copyrighted, patented or patentable, or otherwise, shall remain the property of the originating party. In the event of joint intellectual property, the parties shall establish their respective rights by negotiations between them. All patents derived from inventions conceived or first actually reduced to practice in the course of research conducted by EMI shall belong to University. University, pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, will have ownership of all patents developed from this work, subject to "march-in" rights as set forth in this Act. Affiliates may negotiate a nonexclusive fee-bearing license with the right to sublicense to its subsidiaries and affiliates. If only one Affiliate seeks a license, that Affiliate may negotiate an exclusive fee-bearing license.
3. **No License.** Neither the execution and delivery of this Agreement nor the furnishing of any proprietary information by either party shall be construed as granting to the other party either expressly, by implication, estoppel, or otherwise, any license under any invention or patent, hereafter owned or controlled by the party furnishing same.

## **Article 3: Miscellaneous**

1. **Proprietary Information.** During the term of this Agreement, it may be necessary for either party to provide proprietary information to the other. In such event, the disclosure and use of all proprietary information shall be in accordance with Exhibit A.
2. **Public Release of Information.** Neither party shall issue a news release, public announcement, advertisement, or any other form of publicity concerning their efforts in connection with this Agreement without obtaining prior written approval from the other party. In the event such approval is granted, any resulting form of publicity shall give full consideration to the role and contributions of the parties.

3. Communications: All communications relating to this Agreement shall be directed to the following designated individuals:

For programmatic and technical coordination and direction:

**For Virginia Tech:**

**For \_\_\_\_\_:**

Shashank Priya  
Virginia Tech  
410 Kelly Hall  
Blacksburg, VA 24061  
Phone: 540-231-0745  
Email: spriya@vt.edu

Phone:  
Email:

Any notice, demand, request, statement, or other writing required or permitted by this Agreement shall be deemed to have been sufficiently given either when personally delivered or mailed by certified or registered United States mail with postage prepaid to the individual representatives and addresses of the parties specified herein. The individuals designated below shall, unless and until otherwise provided in writing by the appropriate party, be the only individuals eligible to receive any and all written notices under this Agreement:

**For Virginia Tech:**

**For \_\_\_\_\_:**

Linda R. Bucy  
North End Center, Suite 4200  
300 Turner Street, NW  
Blacksburg, VA 24061  
Phone: 540-231-5281  
Email: ospdirector@vt.edu

4. Assignment. This Agreement may not be assigned or otherwise transferred by either party, in whole or in part, without the express prior written consent of the other party. For the purpose of this Agreement, any name change, corporate merger, acquisition, or similar change shall not be considered an assignment.
5. Export Controls. It is understood that both parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data or source code, collectively hereafter referred to as "Items." Each party is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical

data subject to such export controls, the disclosing party shall notify receiving party's person identified in paragraph 12 herein for receipt of notices in writing for of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.

5. Severability. In the event any portion of the Agreement is deemed invalid or unenforceable for any reason by a court or agency of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.
6. Changes. Any modification or amendment to this Agreement shall be in writing and signed by a duly authorized official of both of the parties hereto.
7. Applicable State Law. This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Virginia, without giving effect to principles of conflict of law.
8. Use of Name. Neither party will use the name of the other in any advertising or make any form of representation or statement in relation to the Research which would constitute an express or implied endorsement of any commercial product or service without first having obtained written permission of the other Party.
9. Liability. Virginia Tech is a state educational institution and enjoys the sovereign immunity of the Commonwealth of Virginia. Without waiver of this immunity and to the extent permitted by the Constitution and laws of the Commonwealth of Virginia, Virginia Tech shall be solely responsible where found liable, to the extent covered by insurance, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with this agreement and occurring within the scope of this agreement. Nothing herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth. Neither party is assuming any liability for the actions or omissions of the other party. Each party will hold the other party harmless against all claims and liability arising from the negligence of a party's agents or employees pursuant to the scope of this agreement.
10. Entire Agreement. This Agreement constitutes the entire, complete, and final understanding and agreement between the parties on the Program and Subject Solicitation and supersedes any previous or other understandings, commitments, or agreements, oral or written. No changes may be made in this Agreement without the written agreement of duly authorized representatives of each of the parties hereto. Each party covenants that there is no agreement between itself and any other person, firm, or corporation which would cause this Agreement not to have full force and effect.

IN WITNESS WHEREOF, the parties hereto have, through duly authorized representatives, executed this Agreement effective as of the day and year indicated in the preamble.

**Virginia Polytechnic Institute  
and State University**

**Affiliate**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Linda R. Bucy  
Title: Assistant Vice President and Interim  
Director of Sponsored Programs

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
Nondisclosure Agreement

The parties anticipate that it may be necessary for either party to transfer to the other information of a proprietary nature. With respect to such information the parties agree as follows:

1. “Proprietary Information”, for the purposes of this Agreement, shall mean certain proprietary or confidential business or technical information including, but not limited to, technical, financial, commercial, marketing or other business information relating to the above subject matter, that the disclosing party desires to protect against unrestricted disclosure or competitive use. Information to be subject to this Agreement shall be disclosed in writing and labeled with an appropriate proprietary legend. When disclosed verbally or visually, the Proprietary Information shall be designated as proprietary at the time of such disclosure, with subsequent confirmation provided in writing within ten (10) calendar days following such disclosure, referencing the date and description of the Proprietary Information disclosed with an appropriate proprietary legend affixed thereto. Proprietary Information disclosed by Virginia Tech may include invention disclosures or other confidential information of Virginia Tech Intellectual Properties, Inc. (VTIP), a nonprofit corporation that manages and licenses intellectual properties assigned to it by Virginia Tech
2. The “Purpose” for which Proprietary Information shall be disclosed is the use and evaluation of Proprietary Information in connection with the Proposal to be submitted under the Teaming Agreement.
3. Unless the parties enter into additional agreements, in which case the rights and obligations of the parties shall be governed by those agreements, the parties agree that for a period of three (3) years from the date of disclosure (or in case of trade secrets, as long as such proprietary information remains a trade secret), the receiving party shall:
  - a. Protect received Proprietary Information from disclosure to third parties with at least the same degree of care (but no less than a reasonable degree of care) as it uses to protect its own proprietary or confidential information of like kind from unauthorized use or disclosure; and
  - b. Limit the access to and dissemination of received Proprietary Information only to those individuals that have a need for such information to fulfill the Purpose stated herein and have been notified of and agree to the obligations imposed by this Agreement; and
  - c. Use received Proprietary Information only in furtherance of the Purpose; and
  - d. Not reproduce received Proprietary Information or incorporate it into derivative works or notes unless necessary to fulfill the Purpose, and in such case only if that Proprietary Information continues to be identified as Proprietary Information of the disclosing party.
4. The foregoing shall not apply to any information that the receiving party can show by competent evidence:
  - a. Was known to it prior to the disclosure of that information by the disclosing party; or

- b. Is independently developed by or for it without breach of this Agreement by persons who have not been exposed to the Proprietary Information; or
- c. Was publicly available and readily ascertainable in substantially the same form at the time of disclosure, or became publicly available and readily ascertainable in such form without breach of this Agreement; or
- d. Was or is publicly disclosed by the disclosing party, or is rightfully received by the receiving party from a third party, without an obligation of confidentiality; or
- e. Is required by statutory, regulatory, administrative or judicial order or requirement to be disclosed, provided that the disclosing party gives prompt notice of such intended disclosure.

Proprietary Information shall not be deemed to be within the above exceptions merely because it is (i) embraced by more general public information, or (ii) a combination derivable from separate sources of public information, none of which discloses the combination itself.

- 5. It is understood that both parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data or source code, collectively hereafter referred to as "Items." Each party is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical data subject to such export controls, the disclosing party shall notify receiving party's contracting officer in writing of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.
- 6. Proprietary Information remains the property of the disclosing party. Upon written request of the disclosing party, the receiving party shall immediately return or destroy the Proprietary Information supplied by the disclosing party, including any and all copies thereof and including all analyses, compilations, summaries, studies and other material prepared by such party or its employees and based in whole or in part on, or otherwise containing or reflecting, any of the Proprietary Information.
- 7. It is agreed by the receiving party that the disclosure by disclosing party of its Proprietary Information does not grant any rights, either expressly, by implication, estoppel, or otherwise to intellectual property or any other right or license, except as specifically set forth herein. None of the Proprietary Information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by either party to the other with respect to the infringement of trademarks, patents, copyright, or any rights of privacy, or other rights of third persons.
- 8. Neither this Agreement nor the disclosure or receipt of Proprietary Information shall create an



obligation for either party to make any further agreement or business arrangement, purchase products or services, or engage in any present or future marketing activities. This Agreement imposes no obligation to disclose Proprietary Information, nor to purchase, sell, license, transfer, otherwise dispose of, or practice any products services or information.

9. No failure or delay by a party in exercising any right, power, or privilege under this Agreement or enforcing any provision of this Agreement shall operate as a waiver thereof, nor preclude the party from any later exercise thereof or the exercise of any other right, power, or privilege under this Agreement, nor seeking enforcement or any available remedy. Each party acknowledges that any injury due to the improper disclosure or use of Proprietary Information may be irreparable. Therefore, the injured party is entitled to seek an injunction to prevent the threatened or actual disclosure or use of Proprietary Information in addition to all other remedies that may be available.
10. Unless earlier terminated, this Agreement shall continue in full force and effect for so long as the parties continue to exchange Proprietary Information. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. The termination of this Agreement shall not relieve either party of its obligations with respect to Proprietary Information received under this Agreement.
11. Neither party will use the name of the other in any advertising or make any form of representation or statement in relation to the Research which would constitute an express or implied endorsement of any commercial product or service without first having obtained written permission of the other Party
12. This Agreement does not create any agency, partnership, joint venture, employment, or independent contractor relationship between the parties.
13. This Agreement shall be binding upon the parties, their successors, and assignees. This Agreement is personal to, and may not be assigned or transferred by, the parties without the prior written consent of the other.
14. Any amendment to or termination of this Agreement must be made in writing and signed by the parties. Any waiver of a provision of this Agreement must be in writing signed by the party making the waiver.
15. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without giving effect to principles of conflict of law.
11. This Agreement sets forth the entire understanding between the parties hereto relative to the subject matter hereof, and supersedes all previous or contemporaneous understandings, commitments, or agreements, written or oral, on this subject.

12. All provisions of this Agreement shall be applicable only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal or unenforceable under any applicable law. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of other provisions of this Agreement shall not be affected thereby.

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