

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF**

**VIRGINIA COMMONWEALTH UNIVERSITY  
SCHOOL OF BUSINESS FOUNDATION**

A Virginia Nonstock Corporation

1. **Name.** The name of the corporation is

VIRGINIA COMMONWEALTH UNIVERSITY  
SCHOOL OF BUSINESS FOUNDATION

2. **Purposes.** The Foundation is organized exclusively for educational, scientific and charitable purposes as defined in Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future federal tax statute (the “Code”), specifically, to provide financial and other support to the School of Business of Virginia Commonwealth University. Subject to the limitations set forth below, the Foundation may conduct any

or all lawful affairs, not required to be stated specifically in these Articles, for which corporations may be incorporated under the Virginia Nonstock Corporation Act.

3. **Activities and Powers.**

- (a) The Foundation shall not be operated for profit. It may engage only in activities that may be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Code and by a corporation to which contributions are deductible under Sections 170(c), 2055 and 2522 of the Code. To the extent consistent with Section 501(c)(3) of the Code, the Foundation may exercise any and all powers conferred upon nonstock corporations by

Sections 13.1-826 and -827 of the Virginia Nonstock Corporation Act.

- (b) No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation (except as otherwise permitted by Section 501(h) of the Code); and the Foundation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

- (c) No part of the net earnings of the Foundation shall inure to the benefit of any trustee or officer of the Foundation or any person having a personal or private interest in the activities of the Foundation, except that the Foundation may pay reasonable compensation for services rendered and may make payments or distributions in furtherance of the purposes set forth in Article 2.

[1]

4. **Members**. The Foundation shall have no members. All voting power, including without limitations power to vote on amending these Articles of Incorporation, shall be vested in the Board of Trustees.

5. **Trustees**.

- (a) The Board of Trustees shall consist of not less than fifteen (15) and not more than forty (40) members. The Board of Trustees, within the foregoing limitations, shall have the power to fix its own number.

- (b) The classes of Trustees shall be as follows.

- (i) **Founding Trustees.** Founding Trustees were elected by the initial

Board of Trustees for unlimited terms, subject only to their continued ability and willingness to remain active in the governance of the Foundation.

- (ii) **Elected Trustees.** Elected Trustees shall be elected by the Board of Trustees. One Elected Trustee must be chosen from nominees of the Board of Visitors of Virginia Commonwealth University. The term of an Elected Trustee shall be three (3) years, except that a Trustee elected to an officer position shall continue to be a Trustee so long as that Trustee holds the office, even though the length of that Trustee's service as Trustee does not otherwise conform to this section.

- (iii) **Ex-officio Trustees.** Ex-officio Trustees with vote shall be the President of Virginia Commonwealth University, a member of the Virginia Commonwealth University Board of Visitors, the Executive Director of the Foundation, and the Dean of the School of Business.

- (c) The Board of Trustees shall fill all vacancies among Founding or Elected Trustees, whether occurring due to resignation, incapacity, removal, death or other cause. Any Trustee elected to replace a Founding Trustee shall be considered an Elected Trustee. During the time that any vacancy remains unfilled the remaining members of the Board of Trustees shall be deemed to constitute the full Board and shall be empowered to act as such.

- (d) The Board of Trustees may create a class of non-voting Emeritus Trustees consisting of former Founding Trustees and former Elected Trustees who have ceased to serve in that capacity. Emeritus Trustees shall have all the privileges of Elected Trustees except the right to vote.

[2]

**6. Registered Office and Agent.** The registered office of the Foundation shall be a resident of Virginia and a member of the Virginia State Bar and whose office is the Foundation's registered office.

**7. Dissolution.** Upon the dissolution of the Foundation and the winding up of its affairs,

the net assets of the Foundation shall be distributed exclusively to the Virginia Commonwealth University Foundation to support business education at Virginia Commonwealth University. If the Virginia Commonwealth University Foundation is not described in Sections 170(c)(2) and 501(c)(3) of the Code when distributions are to made to it, the net assets of the Foundation shall be distributed to one or more entities organized and operated exclusively for charitable scientific, or educational purposes and then so described as chosen by the Virginia Commonwealth University Board of Visitors, to be used to support business education on the Monroe Park Campus of Virginia Commonwealth University.

**8. Indemnification.**

(a) In this Article:

“applicant” means the person seeking indemnification pursuant to this Article;

“expenses” includes counsel fees;

“liability” means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan or reasonable expenses incurred with respect to a proceeding;

“party” includes an individual who was, is or is threatened to be made a named defendant or a respondent in a proceeding; and

“proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(b) In any proceeding brought by or in the right of the Foundation, no Trustee or officer of the Foundation shall be liable to the Foundation for monetary damages

with respect to any transaction, occurrence or course of conduct, whether prior to or subsequent to the effective date of this Article, except for liability resulting from such person's having engaged in willful misconduct or a knowing violation of the criminal law or any federal or state securities laws.

**(c) The Foundation shall indemnify**

- (i) Any person who was or is a party to any proceeding, including a proceeding as in the right of the Foundation, by reason of the fact that he is or was a Trustee or officer of the Foundation or

[3]

- (ii) Any Trustee or officer who is or was serving at the request of the Foundation as a director, trustee, partner or officer of another corporation, partnership, joint venture, trust, employee benefit or other enterprise, against any liability incurred by him in connection with such proceeding unless he engaged in willful misconduct or a knowing violation of the criminal law. A person is considered to be serving an employee benefit plan at the Foundation's request if his duties to the Foundation also impose duties, or otherwise involve services by him, to plan or to participants in or beneficiaries of the plan. The Board of Trustees is hereby empowered, by a majority vote of disinterested Trustees, to enter into contract to indemnify any Trustee or officer in respect of any proceedings arising from any act or omission, whether occurring before or after execution of such contract.

- (d) The provisions of this Article shall be applicable to all proceedings commenced after the adoption hereof, arising from any act or omission, whether occurring before or after such adoption. No amendment or repeal of this Article shall have any effect on these rights provided under this Article with respect to any act or omission occurring prior to such amendment or repeal. The Foundation shall promptly take all such actions, and make all such determinations, as shall be necessary or appropriate to comply with its obligation to make any**

indemnity under this Article and shall promptly pay or reimburse all reasonable expenses, including attorneys' fees, incurred by any such Trustee or officer in connection with such actions and determinations or proceedings of any kind arising there from.

- (e) The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the applicant did not meet the standard of conduct described in Section (b) or (c) of this Article.**

- (f) Any indemnification under section (c) of this Article (unless ordered by a court)**

shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification to the applicant is proper in the circumstances because he has met the applicable standard of conduct set forth in section (c). The determination shall be made:

- (i) By the Board of Trustees by a majority vote of a quorum consisting of Trustees not at the time parties to the proceeding;
- (ii) If a quorum cannot be obtained under subsection (i) of this section, by majority vote of a committee duly designated by the Board of Trustees (in which designation Trustees who are parties may participate), such committee consisting solely of two more Trustees not at the time parties to the proceeding;
- (iii) By special legal counsel:

[4]

- (A) Selected by the Board of Trustees or its committee in the manner prescribed in subsection (i) or (ii) of this section, or the same manner as the determination that indemnification is appropriate, except that if the determination is made by special legal counsel, such evaluation as to the reasonableness of expenses shall be made by those entitled under subsection (iii) of this section (f) to select counsel.
- (iv) The Foundation shall pay for or reimburse the reasonable expenses incurred by any applicant who is a party to a proceeding in advance of final disposition of the proceeding or the making of any determination under section (f) if the applicant furnishes the Foundation:
  - (A) A written statement of his good faith belief that he has met the standard of conduct described in section (c); and
  - (B) A written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet such standard of conduct.
- (v) The undertaking required by paragraph (B) of subsection (a) of this section shall be an unlimited general obligation of the applicant but need not be secured and maybe accepted without reference to financial ability to make repayment.
- (vi) Authorizations of payments under this section shall be made by the persons specified in section (f).
- (g) The Board of Trustees is hereby empowered, by majority vote of the quorum consisting of disinterested Trustees, to cause the Foundation to indemnify or contract to indemnify any person not specified (c) of this Article who was, is or may become a party to any proceeding, by reason of the fact that he is or was an employee or agent of the Foundation, or is or was serving at the request of the Foundation as director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, to the same extent as if such person were specified as one to whom

indemnification is granted under section (c). The provisions of sections (c) through (g) of this Article shall be applicable to any indemnification provided pursuant to this section (h).

**(h)** The Foundation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article and may also procure insurance, in such amounts as the Board of Trustees may determine, on behalf of any person who is or was a Trustee, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against or incurred by him in any such

[5]

capacity or arising from his status as such, whether or not the Foundation would have power to indemnify him against such liability under the provisions of this Article.

**(i)** Every reference herein to directors, trustees, officers, employees or agents shall

include former directors, trustees, officers, employees and agents and their respective heirs, executors and administrators. The indemnification hereby provided and provided hereafter pursuant to the power conferred by this Article on the Board of Trustees shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of insurance that may

be purchased and maintained by the Foundation or others, with respect to claims, issues or matters in relation to which the Foundation would not have the power to indemnify such person under the provisions of this Article. Such rights shall not prevent or restrict the power of the Foundation to make or provide for any further indemnity, pursuant to one or more indemnification agreements, bylaws, or other arrangements (including, without limitation, creation of trust funds or security interests funded by letters of credit or other means) approved by the Board of Trustees (whether or not any of the Trustees of the Foundation shall be a party to or beneficiary of any such agreements,

bylaws or arrangements); provided however, that any provision of such agreements, bylaws or other arrangements shall not be effective if and to the extent that is determined to be contrary to this Article or applicable laws of the

Commonwealth of Virginia.

Each provision of this Article shall be severable, and an adverse determination as to any such provision shall in no way affect the validity of any other provision.