

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – C
DATE: October 5-6, 2022

SUBJECT

Dakota State University Applied Research Corporation (DSU-ARC)

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL ch 5-29](#) – Research Parks

[SDCL ch 47-22](#) – Nonprofit Corporations – Formation and General Powers

BACKGROUND / DISCUSSION

SDCL chapter 5-29 provides the Board with express, comprehensive authority to create research parks and to provide for their governance and operation. In particular, SDCL § 5-29-16 authorizes the Board to form nonprofit research park corporations, “separate and apart from the state, to construct, finance, develop, maintain, and operate research parks,” and SDCL § 5-29-17 stipulates that each research park corporation formed by the Board pursuant to § 5-29-16 “be governed by, and all of the corporation's functions, powers, and duties shall be exercised by, a board appointed by the Board of Regents” and have the Board of Regents as its sole member.”

Dakota State University requests that the Board authorize the formation of a nonprofit corporation (DSU-ARC) pursuant to its authority under SDCL chapter 5-29, and consistent with the Articles of Incorporation set forth in Attachment I, and the By-Laws set forth in Attachment II.

IMPACT AND RECOMMENDATION

DSU-ARC will operate the DSU Applied Research Laboratory in Sioux Falls authorized by SB130 from the 2022 Legislative Session and conduct related cyber activities.

Staff recommends approval.

ATTACHMENTS

Attachment I – Articles of Incorporation of DSU-ARC

Attachment II – DSU-ARC Bylaws

DRAFT MOTION 20221005_6-C:

I move to authorize the incorporation of DSU-ARC by filing the Articles of Incorporation in substantially similar form to those set forth in Attachment I, to adopt the by-laws for the corporation in substantially similar form to those set forth in Attachment II and begin the process of developing the structure and activities necessary to support the purpose of this corporation.

ARTICLES OF INCORPORATION OF DSU-ARC

We, the undersigned, of full age, for the purpose of forming a corporation under and pursuant to SDCL 5-29 and the provisions of the South Dakota Nonprofit Corporation Act, South Dakota Codified Laws, Chapters 47-22 to 47-28, inclusive, and the laws amendatory thereof and supplementary thereto, do hereby associate ourselves as a body corporate and adopt the following Articles of Incorporation.

ARTICLE I

The name of this corporation shall be DSU Applied Research Corporation (DSU-ARC).

ARTICLE II

This corporation is formed exclusively for the purpose of developing, maintaining, and operating economic development initiatives that support the teaching, research, or service mission of Dakota State University by expanding opportunities for the conduct of applied cyber research and related public service or activities of the nature enumerated in SDCL § 5-29-2(3), in furtherance thereby of the objectives stated in § 5-29-1, and all acts incident to or necessary for the accomplishment of the aforesaid purposes and do any and all acts incidental to the transaction of the business of this corporation or expedient for the attainment of the purposes stated herein.

Within the framework of these purposes, this corporation is organized and shall be operated exclusively to engage in, advance, promote, and administer charitable, educational, and scientific activities and projects of every kind and nature whatsoever in its own behalf or as the agent, trustee, or representative of others; to connect core university activities with private sector resources and companies, to grow university research capacity, resources and talent, to facilitate physical infrastructure necessary to support creation and attraction of research and innovation based businesses, and to aid, assist, and contribute to the support of corporations, associations, and institutions which are operated exclusively for such purposes and which are described in Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of future tax code. For

those purposes and not otherwise, this corporation shall have only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, and to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom for the furtherance of the purposes of this corporation hereinabove set forth, of any of them, and to lease, mortgage, encumber, and use the same, and such powers which are consistent with the foregoing purposes and which are afforded to this corporation by the South Dakota Nonprofit Corporation Act, and by any future laws amendatory thereof and supplementary thereto. Provided, however, that all such powers of the corporation shall be exercised only so that this corporation's operations shall be exclusively within the contemplation of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of future tax code.

ARTICLE III

No part of the net income or net earnings of this corporation shall inure to the benefit of any director, or individual, and no substantial part of its activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. This corporation shall not participate in or intervene (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

All references in these Articles of Incorporation to Sections of the Internal Revenue Code include any provisions thereof adopted by future amendments thereto and any cognate provisions in future internal revenue codes to the extent such provisions are applicable to this corporation.

ARTICLE IV

The period of duration of corporation existence of this corporation shall be perpetual.

ARTICLE V

The initial registered office of this corporation is c/o President's Office, Dakota State University, 820 N. Washington Ave., Madison, South Dakota, 57042-1799. The name of this corporation's initial registered agent at such address is José-Marie Griffiths, who by her signature as an incorporator, consents to serve as registered agent.

ARTICLE VI

The name and address of each incorporator is:

<u>Name</u>	<u>Post Office Address</u>
José-Marie Griffiths	820 N. Washington Ave. Madison, SD 57042
Nathan Lukkes	306 E. Capitol Ave., Ste 200 Pierre, SD 57532

ARTICLE VII

The operation of this Corporation shall be governed by its Board of Directors. The number of directors constituting the initial Board is five (5). The names and addresses of the persons who are to serve as such directors until the first annual meeting of the Member or until their successors are appointed and shall qualify, are:

<u>Name</u>	<u>Post Office Address</u>
José-Marie Griffiths	820 N. Washington Ave. Madison, SD 57042
Nathan Lukkes	306 E. Capitol Ave., Ste 200 Pierre, SD 57532
Miles Beacom	48027 Riverside Place Sioux Falls, SD 57108
Andrea Thompson	416 Oronoco St. Alexandria, VA 22314
Sara Venhuizen	119 W. Carmel Lane Sioux Falls, SD 57108

ARTICLE VIII

The By-Laws of the corporation shall hereafter determine the number of directors of the corporation, subject to the approval of the Member. The Directors shall be appointed at the annual meeting by the Member. Directors of this corporation shall not be personally liable for the payment of any debts or obligations of this corporation of any nature whatsoever, nor shall any of the property of the directors be subject to the payment of the debts or obligations of this corporation to any extent whatsoever. Time and place of the meetings of the Board of Directors and such other regulations with respect to them as are not inconsistent with the provisions of these Articles of Incorporation, shall be specified, from time to time, in the By-Laws of this corporation.

ARTICLE IX

This corporation shall have no capital stock and there shall be one Member with voting rights of this corporation, the South Dakota Board of Regents.

ARTICLE X

These Articles of Incorporation may be amended from time to time in the manner prescribed by law, but no such amendment shall change the purpose of the corporation, the provisions of Article VII, Article VIII, Article IX or Article XI, hereof, without the consent of the Member.

ARTICLE XI

This corporation may be dissolved in accordance with the laws of the State of South Dakota. Upon dissolution of this corporation any surplus property remaining after the payment of its debts shall be disposed of by transfer to one or more of the institutions governed by the Member in support of their educational and research activities, in such proportions as the Board of Directors of this corporation shall determine, subject to the approval of the Member. If the Member has no state or local governmental institutions remaining at the time of dissolution, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue

Code of 1986, or corresponding section of future tax code, at the time of transfer, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of property and assets held by this corporation upon trust or other condition, or subject to any executory or special limitation, and such property, upon dissolution of this corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of October 2022.

José-Marie Griffiths

Nathan Lukkes

STATE OF SOUTH DAKOTA)

: ss

COUNTY OF _____)

On this ____ day of October 2022, before me, the undersigned officer, personally appeared José-Marie Griffiths, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

My Commission Expires: _____

Notary Public - State of South Dakota

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$$:SS$$

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On this ____ day of October 2022, before me, the undersigned officer, personally appeared Nathan Lukkes, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

My Commission Expires: _____

Notary Public - State of South Dakota

**BYLAWS
OF
DSU Applied Research Corporation (DSU-ARC)**

ARTICLE I

Location

The principal office of this corporation, at which the general business of this corporation shall be transacted and where the record of this corporation shall be kept, shall be at _____.

ARTICLE II

Purpose

The primary purpose of the Corporation is to conduct applied/problem-driven cybersecurity research to assist public and private national security partners in support of the overall cybersecurity needs of the United States. The Corporation may also conduct applied cyber research, support related public service activities, and/or provide space for related or complementary cyber activities, particularly in the industries of agriculture, health care, and finance.

ARTICLE III

Members and Annual Meeting

As provided in the Articles of Incorporation, this corporation has one member with voting rights, the South Dakota Board of Regents, which shall hold its annual meeting of the Member pursuant to SDCL 47-23-4 immediately following the first regularly scheduled meeting of the South Dakota Board of Regents in each calendar year, or at such other time and place as may be designated from time to time by the member.

ARTICLE IV

Directors

The Board of Directors shall consist of five (5) to nine (9) members, all of whom shall be US Citizens. The President of Dakota State University shall serve as an ex officio, voting member of the Board of Directors. A simple majority of the Board of Directors, including the Chair and President/CEO, shall hold and maintain active security clearances issued by a US Governmental entity at or above the minimum level required for Board Members of entities maintaining a Facilities Clearance License (FCL) for government applied research contracts.

The Member of the Corporation may also designate other ex officio participants without voting rights as needed to effectively engage with relevant stakeholders. Non-voting ex officio participants are not members of the Board of Directors. The initial Board of Directors shall be the initial five Directors set forth in the Articles of Incorporation and such additional directors appointed by the Member from the slate of nominees submitted by the President of DSU, which may be supplemented by the Member. These Directors shall serve a one-year term as the Board of Directors.

Thereafter, all Directors shall be appointed by the Member at the annual meeting of the Member from a slate of nominees submitted by the current Board of Directors directly or through a nominating committee under Article VI, Section 1, which may be supplemented by the Member.

Each Director shall hold office until a successor has been selected and qualified at the next regular annual meeting of the Board of Directors following the expiration of his or her term, unless such Director sooner dies, resigns, or is removed from the Board of Directors. After the initial one-year term for all directors, as close to as possible equal proportions of Directors shall be appointed to a one (1) year term; a two (2) year term and a three (3) year term, so that there are staggered terms.

Thereafter, each Director shall serve a three (3) year term. The Member shall approve selections of the remaining Directors to fill vacancies as they arise upon death, resignation, removal, or expiration of term, and Directors may be reappointed for three terms, and upon expiration of a term, shall serve until the vacancy is filled.

ARTICLE V

Meetings of the Board of Directors

Section 1. The annual meeting of the Board of Directors shall be held at such time in the month of March in each year as may be designated from time to time by the Board of Directors and at the place, within or without the State of South Dakota, designated from time to time by the Board of Directors.

Section 2. Other regular meetings of the Board of Directors may be established by the Board of Directors. Such meetings may be held without notice at the principal office of this corporation or at such other place or places as the Board of Directors from time to time designate.

Section 3. Special meetings of the Board of Directors may be called at any time by (a) the Chair of the Board of Directors, or (b) by the Board of Directors, or (c) upon the written request of three or more members of the Board of Directors. Any person or group of persons entitled to call a special meeting of the Board of Directors may make a written request to the Secretary to call the meeting, and the Secretary shall give notice of the meeting, setting forth the time, place, and purpose thereof, to be held between five (5) and thirty (30) days after receiving the request.

Section 4. Written notice of each annual meeting of the Board of Directors stating the time and place thereof shall, unless sent electronically pursuant to Article IV, Section 7 below, be mailed, postage prepaid, not less than five (5) nor more than thirty (30) days before the meeting, excluding the day of the meeting, to each director at his or her address according to the last available records of this corporation. Any director may make written waiver of notice before, at, or after a meeting. The waiver shall be filed with the person who has been designated to act as Secretary of the meeting, who shall enter it upon the records of the meeting. Appearance at a meeting is deemed a waiver unless it is solely for the purpose of asserting the illegality of the meeting.

Section 5. At all meetings of the Board of Directors, each director shall be entitled to cast one vote on any question coming before the meeting. The presence of a majority of the Board of

Directors shall constitute a quorum at any meeting thereof, but the directors present at any meeting, although less than a quorum, may adjourn the meeting from time to time. Except as otherwise provided by law or these Bylaws, a majority vote of the directors present at any meeting, if there be a quorum, shall be sufficient to transact any business.

Section 6. When a meeting of the Board of Directors is adjourned to another time or place, notice of the adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Section 7. Any notices required to be provided hereunder by written notice may also be provided by electronic email to the noticed party's email address as listed in the records of the Corporation. Any action that could be taken at a meeting of the Board of Directors may be taken without a meeting when authorized in writing signed by all the directors. The Directors may participate in a meeting of the Board or a Committee of the Board by means of any electronic-based conferencing equipment, and such participation shall constitute presence in person at such meeting.

Section 8. Directors may be removed by the Member for cause, including incompetence, neglect of duty, or malfeasance in office. Any Director that has a clearance revoked by the government shall be immediately removed from the Board of Directors.

Section 9. Any individual appointed to the Board of Directors or other corporate position may hold a concurrent position as a member, employee, or officer of the Member, including a member, employee, or officer also identified as representing the Member for the purposes of these Bylaws; and in such event, there shall be no liability on the part of any such individual for breach of any fiduciary obligation, to either the corporation or to the Member, arising from acts or omissions committed in good faith in reliance on the terms of this Agreement and the conditions of his or her appointment.

ARTICLE VI

Officers

Section 1. The officers of this corporation shall be a Chair, a President/CEO, a Vice President/Vice-Chair, a Secretary, a Treasurer, and such other Vice-Presidents and officers as the Board of Directors may from time to time designate. Other than the Chair, Vice-President/Vice-Chair, and President/CEO, the officers need not be directors of this corporation. The Chair of the Board of Directors shall preside at meetings of the Board of Directors. Officers shall be elected by the Board of Directors to serve until their respective successors are chosen and have qualified. Any officer may at any time be removed by the Board of Directors with or without cause. The same person may hold any two offices at the same time except the offices of (a) Chair and Vice-President/Vice-Chair, Chair and President/CEO and (c) Chair and Secretary or Treasurer.

Section 2. The Vice-President/Vice-Chair shall perform the duties of the Chair in the case of the latter's absence or disability. The execution by the Vice-President/Vice-Chair on behalf of this

corporation of any instrument shall have the same force and effect as if it were executed on behalf of the corporation by the Chair.

Section 3. The President/CEO shall be the chief executive officer of this corporation and be an ex officio, voting member of the Board of Directors. He or she shall have general supervision, direction, and active management of the affairs of this corporation. He or she shall execute on behalf of this corporation all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized by the Board of Directors for the proper and necessary transaction of the business of the corporation.

Section 4. The Vice-President/Vice-Chair shall perform the duties of the President in the case of the latter's absence or disability. The execution by the Vice-President/Vice-Chair on behalf of this corporation of any instrument shall have the same force and effect as if it were executed on behalf of the corporation by the President.

Section 5. The Secretary shall record all proceedings of the meetings of the Board of Directors. They shall give or cause to be given all notices of meetings of the Board of Directors and all other notices required by law or by these Bylaws, and in case of their absence or refusal or neglect to do so, any such notice may be given by the President/CEO or Vice-President/Vice-Chair. The Secretary shall be the custodian of all correspondence, and papers relating to the business of this corporation.

Section 6. The Treasurer shall be the custodian of all financial books relating to the business of this corporation. As necessary, they shall join with the President or Vice-President/Vice Chair in the execution on behalf of this corporation of all contracts, deeds, conveyances, and other instruments in writing which may be required or authorized to be so executed by the Board of Directors for the proper and necessary transaction of the business of this corporation.

The Treasurer shall present at each annual meeting of the Board of Directors a full report of the financial transactions and affairs of this corporation for the preceding year and shall also prepare and present to the Board of Directors such other reports as it may desire and request at such time or times as it may designate.

The Treasurer shall also have the custody of all the funds and securities of this corporation. When necessary and proper he or she shall endorse on behalf of this corporation all checks, drafts, notes, and other obligations and evidences of the payment of money payable to this corporation or coming into his or her possession, and shall deposit the same, together with all other funds of this corporation coming into his or her possession, in such bank or banks as may be selected by the Board of Directors. He or she shall keep full and accurate account of all receipts and disbursements of this corporation in books belonging to the corporation, which shall be open at all times to the inspection of the Board of Directors. He or she shall from time to time make such other reports to the Board of Directors as it may require.

Section 7. Any officer of this corporation, in addition to the powers conferred upon him or her by these Bylaws shall have such additional powers and perform such additional duties as may be prescribed from time to time by said Board.

ARTICLE VII

Committees

Section 1. The Board of Directors may act by and through such committees as may be specified in resolutions adopted by a majority of the directors in office. Each committee shall have such duties and responsibilities as are granted to it from time to time by the Board of Directors. Each such committee shall at all times be subject to the control and direction of the Board of Directors.

Section 2. The Board of Directors shall, by resolution adopted by a majority of the entire board, designate from among its members an Executive Committee consisting of three or more Directors, including the Chair of the Board of Directors, the majority of whom shall hold active security clearances at or above the minimum level required. The Board of Directors may designate one or more Directors as alternate members of the Executive Committee, who may replace any absent member or members of the Executive Committee at any meeting thereof. In the interim between meetings of the Board of Directors, the Executive Committee shall have all the authority of the Board of Directors except to amend these Bylaws or as otherwise provided by law. All acts done and powers and authority conferred by the Executive Committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be certified as being, the act and under the authority of the Board of Directors. The Chair of the Board shall preside at all meetings of the Executive Committee. The Executive Committee shall elect from its members a chair to preside at any meeting of the Executive Committee at which the Chair of the Board shall be absent. Two members of the Executive Committee shall constitute a quorum for the transaction of business.

Section 3. Each committee of this corporation may establish the time for its regular meetings and may change that time as it from time to time deems advisable. Special meetings of any committee of this corporation may be called by the chairman of that committee, or by the President. Two days notice by mail, telephone, or electronic communication shall be given of any special meeting of a committee. At all meetings of a committee of this corporation each member thereof shall be entitled to cast one vote on any question coming before such meeting. The presence of a majority of the membership of any committee of this corporation shall constitute a quorum at any meeting thereof, but the members of a committee present at any such meeting, although less than a quorum, may adjourn the meeting from time to time. A majority vote of the members of a committee of this corporation present at any meeting thereof, if there be a quorum, shall be sufficient for the transaction of the business of such committee.

ARTICLE VIII

Fiscal Year

Unless otherwise fixed by the Board of Directors, the fiscal year of this corporation shall begin on October 1 and end on the succeeding September 30.

ARTICLE IX

Miscellaneous

Section 1. This corporation may have a corporate seal, which may be altered from time to time by resolution of the Board of Directors.

Section 2. These Bylaws may be amended from time to time in the manner prescribed by law. Notwithstanding the foregoing, without consent of the Member, Articles III and IV of these Bylaws may not be amended.

Section 3. To the full extent permitted by any applicable law, this corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, wherever brought, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee, or member of a committee of this corporation, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. Indemnification provided by this Bylaw shall be in addition to and independent of and shall not be deemed exclusive of any other rights to indemnification to which any person may be entitled by contract or otherwise under law. Indemnification provided by this Bylaw shall continue as to a person who has ceased to be a member of the Board of Directors, officer, employee or committee member, shall inure to the benefit of the heirs, executors and administrators of such person and shall apply whether or not the claim against such person arises out of matters occurring before the adoption of this Bylaw. However, any indemnification realized other than under this Bylaw shall apply as a credit against any indemnification provided by this Bylaw.

This corporation may, to the full extent permitted by applicable law from time to time in effect, purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, officer or employee or this corporation or a member of a committee of this corporation against any liability asserted against such person and incurred by such person in any such capacity.

Section 4. Notwithstanding anything herein to the contrary, it is the parties' intent that nothing in these Bylaws waives any applicable sovereign or Eleventh Amendment immunity of the Member, Board of Directors, or their agents, managers, employees, or persons operating through them.

The foregoing Bylaws were adopted by the Board of Directors on the ___ day of _____ 2022.