

**September 18, 2012**  
**Revised – April 22, 2014**  
**Revised – October 22, 2014**

**Separately Incorporated Entities (SIE) Committee of Vice-Presidents’  
Council (VPC)**

**Terms of Reference**

Separately incorporated entities (SIEs) enhance the work of the University and facilitate community engagement and/or contribute to the furtherance of important research and development and the practical application of such research and development.

**Composition of Committee:**

1. The Committee shall be comprised of the following positions. Except under extenuating circumstances, a Committee member may not assign a designate to attend the SIE Committee of VPC on her/his behalf; any designate must be approved by the Committee of VPC in advance.
  - i. Director of Financial and Administrative Services (who shall be Chair)
  - ii. Director of Facilities Management
  - iii. Director of Human Resources
  - iv. Associate Vice-President (Academic) as appointed by the Provost
  - v. Associate Vice-President (Research)
  - vi. Chief Risk Officer
2. The Office of the General Counsel will provide advice to the Committee
3. The Division of Marketing and Communications will provide advice to the Committee
4. No Committee member shall be a member of the Board of a SIE
5. Staff representative of Financial and Administrative Services shall serve as non-voting Secretary of the Committee

**Quorum:**

The quorum for the Committee shall be four (4) from section 1 above.

**Reporting Structure:**

The Audit and Risk Committee of the Board of Regents holds ultimate oversight responsibility for the University's SIEs.

The VPC is responsible for functional oversight of the University's SIEs and it will provide information and advice to the Audit and Risk Committee through the President to facilitate its responsibilities.

The SIE Committee of VPC is a standing committee of the VPC on matters regarding the SIEs of Memorial University as outlined below.

### **Committee Responsibilities:**

The responsibilities of this Committee include the following:

- review and make recommendations to VPC on the Corporate Governance Checklist (CGC) reporting form to ensure completeness and clarity; review and recommend to the VPC necessary changes in the form;
- follow up with each SIE to ensure timely annual submission of the CGC and report to VPC on concerns arising from the checklists, their completeness, and any outstanding issues with any SIE;
- meet every second month, or more often as circumstances may require, to discuss any outstanding issues relating to SIEs;
- review annually and report to the VPC the status of the board of directors of each SIE, including, where relevant, staggering of terms of election or appointment of directors;
- provide requested assistance to the VPC in developing recommendations as to new appointments to each board of directors;
- serve as a conduit for receiving written annual reports from each SIE for presentation to the VPC, which annual reports would include at a minimum financial matters, communications issues, a description of activities undertaken during the year as they relate to the SIE's mandate, confirmation of compliance with all legal requirements and confirmation of compliance with terms and conditions of any agreement between the SIE and the University regarding, inter alia, adherence to University policies, payment of all taxes, etc.;
- attend the annual presentations by the SIEs to VPC to serve as a resource for VPC;
- review annually each SIE Management Agreement to determine if there are changes required. If changes are necessary, discuss the issues with the SIE and recommend revisions to the Management Agreement to VPC;
- review Appendix A: Matters to be Provided for in an Agreement Between the University and the Separately Incorporated Entities to recommend to the VPC any changes needed to this document.

### **Supporting Documents:**

- Appendix “A” to these Terms of Reference “Matters to be Provided for in an Agreement Between the University and the Separately Incorporated Entities”

## **APPENDIX “A”**

### **MATTERS TO BE PROVIDED FOR IN AN AGREEMENT BETWEEN THE UNIVERSITY AND THE SEPARATELY INCORPORATED ENTITIES**

- the establishment of an agency relationship under which the University acts as agent for the SIE in placing SIE employees under the University’s group health and benefit plans and the designation of SIE employees as non-University employees under those group health and benefit plans; SIE should agree that it will in writing request the University’s department of Human Resources, as agent, to place the SIE employee in the group health and benefit plans;
- a requirement that each SIE establish its own money purchase plan or otherwise as recommended by the Committee of the Board of Regents reviewing pension issues;
- a requirement that all employment advertising and letters of offer of employment by SIE to be on SIE (not University) letterhead and that all letters of employment to clearly state the employer is the SIE and to be on SIE letterhead;
- the adoption of certain of the University’s financial policies, travel policies and the requirement to report to the VP Council with respect to any university policies which the board of directors of the SIE resolves is not in the best interests of the SIE to adopt, along with a copy of the policy which the SIE has adopted in its stead;
- details of the terms of any of the University’s “in-kind” contributions (such as payroll, insurance, etc.);
- a requirement that the SIE have in place at all times such insurance coverage as is prudent in the circumstances of the business of the SIE;
- a requirement that the University name and logo should appear on SIE documents, and that the SIE will be described as “supported by” the University but that it be made clear on the face of any contract, cheque, paystub, purchase orders, T-4 slips or other document whereby the SIE undertakes obligations or liabilities, that the University is acting as agent for the SIE and not in its own right;
- a requirement that upon wind-up or any other distribution of assets of the SIE, assets will be distributed to the University and agreeing that any assets now owned or hereafter procured by or donated to the SIE are held in trust for the benefit of the University;
- a requirement that, prior to any total separation from the University or conversion of the SIE into a corporation with share capital operating for profit, the SIE will advise the SIE Standing Committee and undertake to use its best efforts to ensure that the interests of the University are properly protected;
- a requirement that the board of directors of the SIE hold regular meetings, at least quarterly, that minutes be kept and that all corporate record keeping be done in accordance with either the Corporations Act (or the Canada Corporations Act, as the case may be), including the filing of annual returns, notices of directors, annual shareholder or member meetings, etc.;

- a requirement that each SIE provide semi-annual reports to the VP Council via the SIE Standing Committee, along with an annual report, including completed checklist;
- confirmation of the board of directors' fiduciary duty to act at all times in the best interests of the SIE in its decision making and the reporting of material decisions to the VP Council via the SIE Committee;
- a requirement that, just prior to wind-up and following the payment of all then existing liabilities, the SIE will convey all of its assets to the University;
- the maintenance of a reserve of funds to provide for its outstanding liabilities upon wind-up, which would include at a minimum sufficient funds to provide required outstanding payroll and the minimum notice or severance payments to all employees as required by legislation and to pay all statutorily required remittances, such as payroll tax, remittances to Canada Customs and Revenue Agency for outstanding Harmonized Sales Tax or source deductions, workers compensations remittances or any other amounts for which the directors or shareholders of a corporation may become personally liable from time to time by law;
- a requirement that in the event that the directors of the SIE determine that sufficient funding is not likely to be available for the future operations of the entity, then the directors of the SIE should notify the VP Council and take all steps required by the Corporation Act (or the Canada Corporations Act, as the case may be) for the orderly dissolution of the SIE, including payment of all liabilities distribution of any remaining assets and delivery of the necessary notices or applications to regulatory authorities;
- a requirement that, in the event that the SIE Sub-Committee and the VP Council have determined that the mandate of the SIE would be better carried out under a different organizational structure, then the directors will take all steps required by the Corporations Act (or the Canada Corporations Act, as the case may be) for the dissolution of the SIE, including payment of all liabilities, distribution of any remaining assets and delivery of the necessary notices or applications to regulatory authorities;
- a requirement to enter into employment contracts which specify the employees' rights upon wind-up; and
- takes into account any unique facts in respect of the particular University/SIE relationship.