

## Virginia Tech India Research and Education Forum

### FINANCE AND AUDIT COMMITTEE

February 9, 2016

The university desires to be affiliated with the Virginia Tech India Research and Education Forum (VTIREF), a not-for-profit Indian corporation as a university related corporation to foster scientific and technological engagement and graduate education in the area of science, technology, engineering, mathematics, architecture and urban studies and other areas to address current and future global issues and opportunities and to establish educational and research partnerships with the private sector, universities, and research institutes in India.

The corporation will receive oversight from a board of directors composed of both university and external directors. The Vice President for Outreach and International Affairs will serve on the board of directors. The corporation's relationship to the university will be governed by an affiliation agreement, which is attached for review and approval by the Board of Visitors.

This agreement contains the standard terms and conditions of other existing affiliation agreements with the exception of the section related to transfers of any surplus earnings or transfer of ownership of assets upon dissolution. Indian law prohibits the transfer of surpluses or assets to an organization other than a non-profit organization in India.

Initial capitalization of the corporation will include total university funding of up to \$700,000 for fiscal years 2015 through 2017, with VTIREF planning to generate sufficient resources through sponsored projects to be self-sufficient by July 1, 2017. The source of this university funding will be recovered overhead balances. Additionally, VTIREF has executed a collaboration agreement with Dr. M.G.R. Educational and Research Institute, a Deemed-to-be University (Dr. MGR DU), which allows VTIREF to lease fully equipped research and administrative space from Dr. MGR DU to support research initiatives related to Materials and Energy Harvesting. In future phases of the collaboration agreement, Dr. MGR DU agrees to provide up to 50 million rupees (approximately \$0.8 million) of equipment for use by VTIREF to support research initiatives in areas related to Water and Health and Biotechnology.

#### **RECOMMENDATION:**

That the Board of Visitors authorizes the affiliation of the Virginia Tech India Research and Education Forum as a university related corporation and approves the affiliation agreement thereof with the University.

March 21, 2016

**AFFILIATION AGREEMENT BETWEEN  
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY  
AND  
VIRGINIA TECH INDIA RESEARCH AND EDUCATION FORUM**

This Affiliation Agreement, dated as of \_\_\_\_\_ March, 2016, is by and between **Virginia Polytechnic Institute and State University**, a Virginia public corporation (the "UNIVERSITY"), and **Virginia Tech India Research and Education Forum**, a not for profit Indian corporation (the "VTIREF").

**RECITALS:**

1. The University recognizes the contribution VTIREF will make to the University's missions and goals and, therefore, the University is willing to be affiliated with and provide certain benefits to VTIREF. Such action shall not, however, be construed to mean that VTIREF is part of or controlled by the University; that the University is responsible for VTIREF's contracts or other acts or omissions; or that the University approves of VTIREF's activities.
2. The purpose of this Agreement is to describe the entire relationship between the University and VTIREF including the University benefits VTIREF may receive and the conditions for their receipt.

Accordingly, the parties agree as follows:

**a. Representations**

- 1) VTIREF represents that it is a limited shares, non-stock corporation, not-for-profit corporation in good standing with the laws of India. VTIREF will provide the University a copy of its current articles of association, memorandum of association and all future amendments, a list of all directors, administrators and officers, their addresses and phone numbers, and any changes made to the list.
- 2) VTIREF further represents that the officers and board members of VTIREF were provided a copy of this Agreement and they authorized the person executing this Agreement on behalf of VTIREF to execute this Agreement.

**b. Relationship between VTIREF and the University**

The University is a Virginia public corporation and VTIREF is not part of that corporation, but rather exists and operates independently, and for the benefit of, the University.

Annually, prior to consideration by its Board of Directors, VTIREF shall review its annual operating budget, capital budget, long-term program plans, and intended distribution of surplus with the University's designee.

VTIREF agrees that, without the prior written consent of the University President, it will not distribute any assets or proceeds thereof, other than in the ordinary course of business, to any entity or person other than the University designee, and said distribution to be in accordance with the laws of India.

The President of the University shall designate a person to be elected as a director and member of the Executive Committee of VTIREF.

The parties understand and agree that this Agreement is the only source of control the University may have over VTIREF or its activities except to the extent, if any, the University chooses to exercise control over activities occurring on its property and as provided in the governing documents of VTIREF.

**c. Fund Raising Activities**

VTIREF agrees not to conduct fund-raising activities without the prior written consent of the University, provided that the solicitation of research grants and contracts by VTIREF shall not be considered fund-raising activities for purposes of this Agreement.

**d. VTIREF's Dealings with Third Parties**

VTIREF shall not hold itself out as being part of, controlled by, or acting on behalf of the University. VTIREF agrees to take reasonable measures to ensure that third parties understand that it is not part of the corporation which is the University. With respect to advertising, publicity, correspondence, contracts, and other formal means of communication, VTIREF will use its full corporate name to avoid confusion on the part of the third parties.

**e. Tax Matters**

VTIREF shall prepare and timely file all tax returns and reports including information returns required to be filed by it under Indian federal, state and local laws. VTIREF will promptly advise the University in the event of any audit of its tax returns or reports by any governmental entity. VTIREF shall not use the University's taxpayer identification number or the University's tax-exempt status in connection with purchases or sales by VTIREF, gifts to VTIREF, interest or other income of VTIREF, or any other activities of VTIREF.

f. **Liability Insurance and Defense**

VTIREF understands and agrees that the University, the Commonwealth of Virginia, and the employees and agents of either will not be liable for any of VTIREF's contracts, torts, or other acts or omissions, or those by VTIREF's directors, officers, employees or staff, provided that the limitations of liability provided herein shall not apply to faculty and staff of the University acting within the scope of their employment with the University. VTIREF understands and agrees that neither it 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 VTIREF's activities, and the University and the Commonwealth will not provide any legal defense for VTIREF or any such person in the event of any claims against any of them, provided that the limitations of liability provided herein shall not apply to faculty and staff of the University acting within the scope of their employment with the University.

g. **Non-Discrimination**

VTIREF agrees to follow the University's Equal Opportunity and Affirmative Action Statement.

h. **Charges for Services**

VTIREF agrees to reimburse the University upon request for the costs of services provided. To the extent that a rate schedule exists for these services, VTIREF will be charged at the appropriate rate. To the extent there is no rate schedule charge set for a service, VTIREF will be charged a rate to be mutually agreed on by the University and VTIREF based on a cost study to be conducted by the University Controller's Office.

i. **Use of Facilities, Resources and Services**

The University hereby makes VTIREF eligible to use the University's facilities, resources and services, subject to availability and the policies and procedures of the University applicable to such facilities, resources and services.

j. **Audit**

VTIREF shall have an annual audit performed by an independent auditor and shall provide copies of financial statements, management letter and management response produced in connection with the audit to the President of the University and the Vice President for Outreach and International Affairs. VTIREF 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 VTIREF shall be paid by VTIREF. VTIREF will be exempted from the requirement for annual external audit provided that:

- VTIREF has not held any financial assets for the twelve month period preceding the fiscal year ending date,
- the officers of VTIREF certify annually that no financial activities or transactions have occurred or are occurring outside those reflected in the records of VTIREF,
- on an as needed basis, VTIREF agrees to provide as a supplement to its annual financial statements separate unaudited financial schedules providing information on the activities of VTIREF recorded in its records,
- VTIREF continues to participate in the university-related corporation internal audit program.

k. **Subsidiary Corporations**

The provisions of this agreement shall be applicable to any subsidiary corporations and limited liability companies of VTIREF. Approval of the University's Board of Visitors is required for the establishment of University related corporations.

l. **Term and Termination of Agreement**

This agreement shall become effective as of the date written below and shall expire on September 1, 2020, but it will remain in effect past the expiration date unless (i) terminated by the University, with or without cause, at any time by written notice to VTIREF, (ii) terminated by mutual written agreement of the parties, or (iii) replaced by a new agreement.

m. **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.

n. **Notices**

Any notice under this Agreement shall be deemed given when deposited in the mail, postage prepaid, and addressed as follows:

**If to VTIREF:**

**If to the University:**

University Treasurer  
Virginia Tech  
Suite 2400 University Gateway Center (0455)  
902 Prices Fork Road  
Blacksburg, VA 24061

or to such other person, at such addresses, as either party may designate for itself or so notify the other party in writing.

**o. Entire Agreement; Amendments**

This Agreement constitutes the entire agreement between VTIREF 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.

**IN WITNESS THEREOF**, the parties have executed this Agreement below:

**VIRGINIA TECH INDIA RESEARCH  
AND EDUCATION FORUM**

**VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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