



## PEKELILING NAIB CANSOLOR

Bil. 14/2004

Semua  
Dekan Fakulti/  
Pegarah Kampus Cawangan/  
Ketua Bahagian/Pusat/Unit  
Universiti Teknologi MARA

السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ بَرَكَاتُهُ

Y.Bhg. Dato'/Datin/Prof./Tuan/Puan

### KELULUSAN UNTUK MENANDATANGANI *MEMORANDUM OF UNDERSTANDING (MoU)*/ *MEMORANDUM OF AGREEMENT (MoA)* DENGAN PIHAK LUAR

Dengan segala hormatnya saya ingin menarik perhatian Y.Bhg. Dato'/Datin/Prof./tuan/puan mengenai perkara di atas.

Harap maklum bahawa mesyuarat Jawatankuasa Eksekutif (JKE) pada 7 Julai 2004 telah memutuskan supaya semua *Memorandum of Understanding (MoU)*/*Memorandum of Agreement (MoA)* yang hendak ditandatangani dengan mana-mana pihak luar Universiti hendaklah mendapat kelulusan Jawatankuasa Eksekutif terlebih dahulu setelah disemak oleh Penasihat Undang-Undang.

Pihak Y. Bhg. Dato'/Datin/Prof./tuan/puan diminta mengambil maklum dan mengambil tindakan seperlunya berhubung perkara ini.

والسلام

Yang benar

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Surat Kami : 100-UiTM(NC 6/2)  
Tarikh : 28 Julai 2004

## GUIDELINE FOR MOAs

This is to serve as a general guideline as well as a checklist in the preparation and scrutiny of an agreement between the University and another party.

### 1. PARTIES TO THE AGREEMENT

- a. Legal capacity of parties
- b. Status of parties – private individual/company/statutory body/Federal or State Government/foreign entity
- c. Profile of other party

### 2. PREAMBLE TO THE AGREEMENT

- a. Sufficiently reflect the intention of the parties
- b. Sufficiently describe subject matter of the agreement
- c. Sufficiently describe all prior events/transactions or verbal/oral accord between the Parties, that give rise to the agreement, if any.

### 3. DEFINITION CLAUSE

### 4. CONSIDERATION

- a. Form of consideration
- b. Legality of consideration
- c. Reasonableness :
  - Quantum
  - Ethicalness
  - Equitableness

### 5. DURATION OF AGREEMENT

- a. Commencement and expiry date; (certain or ascertainable)
- b. Extension or notice of termination;
- c. Avoid automatic renewal

### 6. RESPONSIBILITIES AND DUTIES OF THE PARTIES

- I. Responsibility of University
  - a. Whether assumed duties and responsibilities are within the powers of the University;
  - b. Reasonableness of duties and responsibilities:
    - Whether realistic and achievable;
    - Duration – time specific

- II. Responsibility of other party
  - a. Whether assumed duties and responsibilities are within the powers of the other party;
  - b. Reasonableness of duties and responsibilities:
    - Whether realistic and achievable;
    - Duration – time specific
  - c. Whether performance of the duty is dependent upon the consent/approval/assistance of a third party not privy to the agreement.
  - d. Responsibilities must be clear, certain and not dependent on any contingency.
  - e. Compliance with relevant laws.
- III. Financial Obligation of each party
  - a. Certainty of costs and expenses
  - b. Mode and time of payment

## 7. REPRESENTATIONS AND WARRANTIES

- a. Form of representation
  - Legal status of parties
  - Power to enter into agreement and perform obligations
  - Authorisation by relevant authority to carry out obligations and responsibilities
  - Declaration that party is free from any restriction or prohibition to perform
- b. Ability to perform obligations financially
- c. Possesses the necessary skills and know-how
- d. Scope and limitation of representations and warranties
- e. Duration of representations and warranties.

## 8. INDEMNITIES AND LIABILITIES

- a. Necessity of indemnity - whether any third party is involved
- b. Reasonableness of indemnities and liabilities
  - Whether fixed quantum has been agreed by parties
  - Duration of indemnities and liabilities
- c. Scope and limitation of indemnities

## 9. CONFIDENTIALITY

- a. Ensure the nature and scope of information provided and exchanged during the course of agreement shall be subject to the duty of confidentiality.
- b. However parties may allow the other party and should reciprocally be allowed to disclose or publicise the existence and objectives, but not the details of the agreement.

- c. Provision of a Non-Disclosure Agreement may be necessary if agreement involves third parties not privy to the agreement i.e. employees, students, servants, agents or contractors, etc.

#### 10. DEFAULT / BREACH

- a. Event of default/breach
- b. Rectification of default/breach
  - Whether extended period is given
  - Whether additional costs incurred
- c. Consequences of default/breach
  - Damages
  - Specific performance
  - Other remedies
- d. Non-waiver clause

#### 11. TERMINATION CLAUSE

- a. Causes of termination
- b. Procedure for termination
- c. Consequences of termination
  - Liabilities
  - Damages

#### 12. DISPUTE AVOIDANCE CLAUSE

- a. Dispute avoidance clause should provide an avenue for parties to amicably discuss any differences before such differences become a dispute.
- b. Committee appointed should be represented by both parties.

#### 13. DISPUTE RESOLUTION

- a. Internal resolution by mutual consultation
  - Forum
  - Notice – venue and time of hearing
- b. Mediation
  - Forum – appointment of Mediator
  - Notice – venue and time of hearing
- c.\* Arbitration
  - Forum– appointment of Arbitrator
  - Notice – venue and time of hearing
  - Laws/regulation governing arbitration

- Language of proceedings
- Costs
- Enforcement of decision/award

*\* Depending on nature of contract*

14. NOTICES

- a. Language of notice
  - Malay
  - English
  - Others
- b. Manner of service

15. INTELLECTUAL PROPERTY RIGHTS

- a. Existing IP rights and possible new IP rights
- b. Ownership – whether joint ownership or co-ownership
- c. Manner of use of IP
  - Exclusivity – whether licensed or otherwise
  - Moral rights
  - Right of first refusal
  - Cost of use (if applicable)
- d. Registration of new IP rights (if any)
- e. Possible commercialisation and exploitation rights
- f. Royalty payment (if any)
- g. Representation of indemnity (See No.s 7 & 8)

16. ASSIGNMENT

17. ENTIRETY CLAUSE

18. REVISION, VARIATION AND AMENDMENT

19. SEVERABILITY

20. WAIVER

21. DISCLAIMER

22. FORCE MAJEURE

23. TIME CLAUSE

24. LEGAL FEES & STAMP DUTY

25. GOVERNING LAW

26. AUTHORISED SIGNATORIES

27. SCHEDULES/APPENDICES/ANNEXURES