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MEMORANDUM OF UNDERSTANDING

WITHIN THE UiTM CONTEXT

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When people think of Memorandums of Understanding, they assume that it is a binding agreement entered into between two or more parties. However, such a preconception is a misnomer because Memorandums of Understanding (MoU) are generally statements to record the parties' willingness to co-operate on a mutual basis in commonly identified areas.

MoUs are drafted and signed by the parties in a format which largely appears similar to a standard term contract. However, what has to be borne in mind is that although MoUs in UiTM are drafted in such a manner, the articles therein contained are mere representations which are clearly denoted as non-legally binding in nature. The format and contents of a standard MoU in UiTM, largely adhere to the format and contents prescribed by the Attorney General's Chambers of Malaysia for all MoUs entered into between local public institutions of higher learning with either local or foreign partners.

Within the UiTM context, each faculty, branch campus or centre will identify and initiate collaboration with either an institution of higher learning, both local and foreign or with government or statutory bodies, industrial partners or private commercial entities. It is then up to that initiator to discuss with their identified partner all the pertinent areas of co-operation, duration of time of the MoU, confidentiality and other relevant terms.

Once the parties have mutually agreed on such terms, they will then proceed with the draft MoU which the *Pejabat Penasihat Undang-Undang* (PPUU) has prepared. The PPUU has issued copies of the standard format MoU including a checklist of all ancillary documents which are also required before a MoU will be approved. As a general rule, MoUs should not contain clauses which may result in financial implications for UiTM.

The standard clauses contained within a MoU are as follows:

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1. Objective
2. Areas of Cooperation
3. Financial Arrangements, if any
4. Effect of Memorandum of Understanding
5. No Agency
6. Entry Into Effect and Duration
7. Revision, Variation and Amendment
8. Termination
9. Notices

In some MoUs, additional clauses are also included, depending on the nature of the MoU to be entered into. These additional clauses are:

1. Protection of Intellectual Property Rights
2. Confidentiality
3. Suspension
4. Settlement of Disputes

Some useful points for consideration are, when dealing with private commercial entities, the PPUU must be given a copy of these items:

1. Company profile
2. Company's registration number
3. Authorised capital
4. Paid up capital
5. List of company directors
6. Name and designation of the person(s) that will be the signatory of the MoU

The aforementioned documents and the draft MoU containing the names and address of all parties are to be given to the MoU for vetting and comments. Should there be any comments or enquiries by the PPUU, the draft MoU will be sent back to the initiator for review and feedback. This process may require the initiator to revert to the third party for their feedback and comments.

Once all issues are resolved, the initiator will then hand over all comments and feedback by the initiator and the third party back to the PPUU. This will be followed by a second vetting process by the PPUU. If there are no further comments, a Letter of Approval will be issued to submit the MoU to the *Jawatankuasa Eksekutif* (JKE) of UiTM for approval. Once the JKE endorses the MoU, the initiator will be subsequently notified and henceforth proceed with the signing of the MoU. According to an LPU decision, MoUs do not require the prior permission of the LPU unless they have financial implications.

Unless there are financial implications, the LPU is merely informed of the MoU.

The authorised signatory of all MoUs is the Vice Chancellor of UiTM. However, in the event that the

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Vice Chancellor is unavailable to sign the MoU, the Dean/Rector/Director of the relevant faculty, branch campus/centre may make a written request to the PPUU, requesting to be the duly authorised signatory for that particular MoU.

In the event that the MoU is rejected by the JKE or the LPU, the initiator will be required to take note of the comments made by the JKE or LPU and make subsequent improvements to the draft. A subsequent draft with amendments and revised clauses may be resubmitted for consideration.

Over the last couple of years, the PPUU has seen a multitude of submissions of draft MoUs between various faculties/branch campuses/centres of UiTM and a host of third parties. Although such efforts are lauded, the PPUU hastens to caution all parties concerned that concluding and signing MoUs are merely a first step in establishing UiTM as an active partner with industry and academic institutions. What is more desirable that all activities envisaged in a MoU should be executed expediently and the MoU should be perceived as a precursor to a more conclusive and consequential subsequent agreement.

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