

JPT.S(G)2000/013/01/03 Jld. 3 (13)



PEKELILING PENTADBIRAN BILANGAN 5 TAHUN 2008

KEMENTERIAN PENGAJIAN TINGGI

**PENURUNAN KUASA MENTERI PENGAJIAN TINGGI KEPADA
LEMBAGA PENGARAH UNIVERSITI BERHUBUNG KELULUSAN
SESUATU MEMORANDUM PERSEFAHAMAN DAN
MEMORANDUM PERJANJIAN**

TUJUAN

1. Pekeliling Pentadbiran ini bertujuan untuk memaklumkan kepada semua Naib Canselor / Rektor Institusi Pengajian Tinggi Awam (IPTA) mengenai keputusan Menteri Pengajian Tinggi untuk menurunkan kuasa bagi meluluskan sesuatu Memorandum Persefahaman (MOU) dan Memorandum Perjanjian (MOA) kepada Lembaga Pengarah Universiti (LPU) tertakluk kepada prosedur-prosedur dan syarat-syarat yang dinyatakan dalam Pekeliling Pentadbiran ini.

LATAR BELAKANG

2. MOU dan MOA merupakan mekanisme yang sering digunakan oleh IPTA untuk menjalin kerjasama dengan mana-mana universiti,

institusi pengajian tinggi (IPT), atau organisasi lain sama ada di dalam mahupun luar Malaysia.

3. Punca kuasa pemeteraian sesuatu MOU dan MOA oleh IPTA adalah berdasarkan kepada dua Akta Parlimen iaitu Akta Universiti dan Kolej Universiti 1971 [Akta 30] dan Akta Universiti Teknologi MARA 1976 [Akta 173]. Di bawah Akta 30, seksyen yang berkaitan adalah seksyen 4(1)(f) dan seksyen 4C Jadual Pertama. Selain itu, peruntukan ini turut dimasukkan (*adopted*) dalam setiap Perlembagaan universiti awam yang ditubuhkan di bawah Akta 30 di mana seksyen tersebut adalah seksyen 6(1)(o) dan seksyen 9.

4. Bagi Universiti Teknologi MARA (UiTM) pula, seksyen yang berkaitan adalah seksyen 4(1)(f) dan seksyen 9 Akta 173. Manakala bagi Universiti Islam Antarabangsa Malaysia (UIAM) yang ditubuhkan di bawah seksyen 5A Akta Universiti dan Kolej Universiti (Pindaan) 1983 di mana pemakaian Akta 30 telah dikecualikan ke atas UIAM, prosedur pemeteraian MOU dan MOA adalah berdasarkan kepada *Article 6(g)* dan *6(x) Memorandum of Association* yang merupakan sebahagian daripada Perlembagaan UIAM.

5. Berdasarkan peruntukan-peruntukan di bawah Akta 30 dan Akta 173, IPTA adalah dibenarkan untuk membuat apa-apa bentuk jalinan kerjasama dengan mana-mana pihak, termasuk IPT atau organisasi lain di luar Malaysia dengan syarat mendapat kelulusan daripada Menteri Pengajian Tinggi.

6. Selain itu, berdasarkan Akta 30, kerjasama yang dinyatakan adalah merangkumi kerjasama dalam kursus pengajian atau program

latihan. Manakala Akta 173 hanya menyebut kerjasama dalam kursus pengajian. Perlembagaan UIAM sebaliknya hanya menyebut bahawa UIAM boleh bekerjasama dengan mana-mana universiti, institusi atau agensi yang mempunyai objektif yang sama dengan UIAM. Meskipun demikian, ketiga-tiga sumber kuasa ini sama ada Akta 30, Akta 173 mahupun Perlembagaan UIAM, masing-masing membenarkan bentuk kerjasama sama ada dengan pihak di dalam atau di luar Malaysia.

7. Di samping itu, peruntukan-peruntukan Akta 30 dan 173 juga menyatakan dengan jelas bahawa IPTA boleh melaksanakan kerjasama ini sama ada secara bersendirian atau secara kolektif dengan IPTA yang lain. Namun Perlembagaan UIAM tidak menyebut apa-apa berkenaan perkara ini.

8. Berkaitan dengan amalan dalam memberi kelulusan bagi sesuatu MOU dan MOA, Kementerian Pengajian Tinggi melalui Jabatan Pengajian Tinggi (JPT) pernah mengeluarkan dua pekeliling rujukan KP.S(PT)7411.Jld.3(18) bertarikh 31 Mei 2005 dan rujukan KP.S(PT)7411.Jld.3/(2) bertarikh 14 November 2002 kepada pihak IPTA yang menjelaskan prosedur bagi kelulusan sesuatu MOU dan MOA.

9. Pekeliling tersebut menyatakan bahawa mana-mana MOU dan MOA yang tidak melibatkan implikasi dasar, kewangan dan keselamatan negara adalah tidak memerlukan kelulusan daripada Kementerian Pengajian Tinggi. Walau bagaimanapun, ia hendaklah mendapatkan kelulusan daripada LPU terlebih dahulu selepas disemak oleh Penasihat Undang-Undang (PUU) setiap IPTA.

Sesalinan MOU dan MOA tersebut hendaklah dikemukakan kepada pihak Kementerian untuk tujuan rekod.

10. Manakala bagi MOU dan MOA yang melibatkan implikasi dasar, kewangan dan keselamatan negara, ianya hendaklah mendapat kelulusan Kementerian terlebih dahulu. Bagi kes-kes sebegini, permohonan tersebut hendaklah dikemukakan ke Kementerian untuk pertimbangan selewat-lewatnya dua bulan sebelum pemeeteraian MOU dan MOA tersebut. Selain itu, semua MOU dan MOA yang memerlukan kelulusan Kementerian mestilah dikemukakan bersama-sama dengan perakuan daripada PUU IPTA masing-masing yang menyatakan bahawa MOU dan MOA tersebut adalah teratur.

11. Jemaah Menteri dalam mesyuaratnya pada 10 Mei 2006 telah memutuskan supaya cadangan MOU yang akan ditandatangani dengan Kerajaan asing hendaklah terlebih dahulu dibentangkan di Mesyuarat Jemaah Menteri untuk pertimbangan dan persetujuan. Kementerian dan agensi-agensi Kerajaan juga hendaklah mendapatkan persetujuan (*authorization*) daripada Kementerian Luar Negeri untuk menandatangani MOU tersebut bagi pihak Kerajaan. Langkah ini adalah bertujuan untuk melindungi kepentingan negara.

12. Berikutan dengan keputusan Jemaah Menteri serta peruntukan di bawah Seksyen 4C Jadual Pertama Akta 30, Kementerian Pengajian Tinggi telah mengemukakan perkara ini ke Mesyuarat Ketua Setiausaha Kementerian dan Ketua Perkhidmatan Bil. 7 Tahun 2007 pada 16 Julai 2007. Mesyuarat tersebut telah mencadangkan supaya Kementerian Pengajian Tinggi membentangkan Memorandum Jemaah Menteri berhubung dengan tatacara penggubalan dan

pemeteraian MOU dan MOA oleh IPTA untuk pertimbangan dan persetujuan Jemaah Menteri.

13. Menteri Pengajian Tinggi kemudiannya telah membentangkan Memorandum Jemaah Menteri mengenai "Tatacara Penggubalan dan Pemeteraian Memorandum Perjanjian dan Memorandum Persefahaman oleh Institusi Pengajian Tinggi Awam" (No. 802/2571/2007) pada 12 September 2007. Mesyuarat Jemaah Menteri antara lain telah bersetuju supaya MOU dan MOA antara mana-mana IPTA dan institusi asing tidak perlu mendapat persetujuan Jemaah Menteri tetapi memadai mendapat kelulusan Menteri Pengajian Tinggi menggunakan kuasa yang diberi oleh Akta 30.

14. Jemaah Menteri juga bersetuju supaya satu jawatankuasa yang dipengerusikan oleh Jabatan Peguam Negara dengan dianggotai oleh Jabatan Perkhidmatan Awam, Unit Perancang Ekonomi, Jabatan Perdana Menteri, Kementerian Kewangan, Kementerian Luar Negeri, dan Kementerian Pengajian Tinggi diwujudkan bagi menggubal peruntukan dan format yang standard untuk MOU dan MOA antara IPTA dengan institusi-institusi asing.

15. Selain itu, Jemaah Menteri turut bersetuju supaya MOU dan MOA di antara IPTA dan institusi-institusi asing menggunakan format dan peruntukan yang standard (setakat mana yang boleh) seperti di sediakan oleh jawatankuasa tersebut. Di samping itu, hanya MOU dan MOA yang mengandungi komitmen yang lebih daripada apa yang diperuntukkan mengikut format standard perlu dikemukakan untuk pertimbangan dan persetujuan Jemaah Menteri.

16. Jemaah Menteri turut memutuskan supaya segala perbelanjaan berikutan termeterainya MOU dan MOA itu (*consequential*) hendaklah ditampung dari peruntukan IPTA yang berkenaan atau Kementerian Pengajian Tinggi dan tidak melibatkan peruntukan tambahan yang perlu dipohon dari agensi pusat. Sekiranya ia melibatkan peruntukan tambahan, maka MOU dan MOA itu hendaklah mendapat kelulusan Jemaah Menteri terlebih dahulu.

17. Keputusan Jemaah Menteri tersebut adalah jelas seperti yang terkandung dalam "Arahan Setiausaha Jemaah Menteri Bilangan 1 Tahun 2008 Panduan Penyediaan Kertas Jemaah Menteri Dan Pelaksanaan Keputusan Jemaah Menteri" yang berkuatkuasa pada 26 Mac 2008. Arahan tersebut telah menggantikan Arahan Setiausaha Jemaah Menteri Bilangan 1 Tahun 2000.

18. Jabatan Peguam Negara telah mengemukakan format standard MOU [Lampiran A1] dan *Guidelines for the Preparation of a Memorandum of Understanding* ("Garis Panduan MOU") [Lampiran A3] kepada Kementerian Pengajian Tinggi pada 19 Mac 2008 untuk ulasan.

19. Berdasarkan format standard MOU dan Garis Panduan MOU yang telah disediakan oleh Jabatan Peguam Negara tersebut, MOU adalah suatu dokumen yang tidak mengikat dari segi undang-undang (*non-legally binding instrument*). Sekiranya format standard ini dipersetujui dan diterima pakai, maka IPTA hendaklah menggunakan format MOU ini secara keseluruhan (*in toto*) tanpa sebarang pindaan lain. Sekiranya terdapat pindaan lain, kecuali pindaan yang berbentuk editorial, maka ia hendaklah dirujuk semula kepada Kementerian

Pengajian Tinggi dan Jemaah Menteri untuk pertimbangan dan kelulusan.

20. Seterusnya, untuk melaksanakan kerjasama seperti yang dinyatakan di bawah MOU tersebut, pihak-pihak kepada MOU hendaklah memasuki suatu perjanjian yang mengikat dari segi undang-undang di mana perjanjian tersebut hendaklah mengandungi klausa-klausa standard iaitu peruntukan mengenai *confidentiality*, *protection of intellectual property rights*, *suspension* dan *settlement of disputes* [Lampiran A2].

21. Dalam membuat pertimbangan mengenai pemakaian format standard MOU dan Garis Panduan MOU tersebut bagi semua IPTA, Kementerian Pengajian Tinggi telah meminta pandangan semua Naib Canselor/Rektor IPTA melalui surat rujukan JPT.S(G)2000/013/01/03/ Jld. 2(11) bertarikh 23 Mei 2008. Berdasarkan pandangan dan ulasan yang diterima, majoriti bersetuju dengan pemakaian dan penyeragaman format standard yang telah disediakan tersebut.

KEPUTUSAN KEMENTERIAN PENGAJIAN TINGGI

22. Justeru, dengan mengambilkira beberapa perkara seperti –

- (i) peruntukan-peruntukan yang berkaitan dengan pemeteraian MOU dan MOA yang terkandung dalam Akta 30, Akta 173, Perlembagaan IPTA dan Perlembagaan UIAM;

- (ii) Arahan Setiausaha Jemaah Menteri Bilangan 1 Tahun 2008 Panduan Penyediaan Kertas Jemaah Menteri Dan Pelaksanaan Keputusan Jemaah Menteri yang berkuatkuasa pada 26 Mac 2008;
- (iii) ulasan dan pandangan daripada Naib Canselor / Rektor IPTA yang diterima;
- (iv) transformasi Kementerian Pengajian Tinggi yang beranjak daripada penggubal dan penguatkuasa dasar kepada pemudah cara dan rakan pembimbing IPTA;
- (v) komitmen Kementerian Pengajian Tinggi untuk memantapkan sistem penyampaian Kementerian selaras dengan Pelan Strategik Pengajian Tinggi Negara dan Pelan Transformasi Kementerian Pengajian Tinggi bagi mengurangkan karenah birokrasi yang antara lain melibatkan kelulusan sesuatu MOU atau MOA; dan
- (vi) hasrat Kementerian Pengajian Tinggi untuk memberikan lebih autonomi kepada IPTA dan memperkasakan LPU,

maka Menteri Pengajian Tinggi telah membuat keputusan untuk bersetuju dengan pemakaian format standard MOU dan Garis Panduan MOU yang telah disediakan oleh Jabatan Peguam Negara untuk digunapakai oleh semua IPTA.

23. Selain itu, Menteri Pengajian Tinggi turut bersetuju untuk membuat penurunan kuasa bagi meluluskan sesuatu MOU dan

MOA kepada LPU IPTA tertakluk kepada syarat-syarat seperti berikut:

- (i) MOU dan MOA tersebut **hendaklah** mengikut format standard secara keseluruhan (*in toto*) seperti yang disertakan di **Lampiran A1, A2 dan A3** Pekeliling Pentadbiran ini;
- (ii) MOU dan MOA tersebut tidak melibatkan dasar-dasar semasa Kerajaan, implikasi kewangan dan keselamatan negara; **dan**
- (iii) MOU dan MOA tersebut bukan ditandatangani dengan mana-mana Kerajaan asing.

24. Sesalinan MOU dan MOA yang telah dimeterai di bawah perenggan 23 tersebut **hendaklah** dikemukakan oleh IPTA berkenaan kepada JPT, Kementerian Pengajian Tinggi untuk tujuan rekod dan pemantauan, **selewat-lewatnya dua (2) minggu selepas** MOU dan MOA tersebut dimeterai.

25. Walau bagaimanapun, **sekiranya** MOU dan MOA tersebut:

- (i) tidak mengikut format standard secara keseluruhan (*in toto*) seperti yang disertakan di **Lampiran A1, A2 dan A3** Pekeliling Pentadbiran ini;
- (ii) melibatkan dasar-dasar semasa Kerajaan, implikasi kewangan dan keselamatan negara; **atau**

(iii) ditandatangani dengan mana-mana Kerajaan asing,

maka MOU dan MOA tersebut hendaklah dikemukakan kepada JPT, Kementerian Pengajian Tinggi untuk pertimbangan dan kelulusan.

26. Mana-mana MOU dan MOA yang dikemukakan kepada pihak Kementerian berdasarkan kepada perenggan 25 di atas hendaklah mematuhi prosedur seperti berikut:

- (i) MOU dan MOA tersebut hendaklah diluluskan oleh LPU IPTA masing-masing;
- (ii) MOU dan MOA tersebut hendaklah disertakan bersama dengan ulasan dan perakuan daripada PUU IPTA masing-masing yang menyatakan bahawa MOU dan MOA tersebut adalah teratur dari segi undang-undang; dan
- (iii) MOU dan MOA tersebut hendaklah dikemukakan kepada JPT, Kementerian Pengajian Tinggi dalam bentuk *hardcopy* dan *softcopy* **selewat-lewatnya dua (2) bulan sebelum** MOU atau MOA tersebut dimeterai. Ini akan memberi masa yang cukup untuk pihak Kementerian meneliti MOU dan MOA tersebut.

27. Selepas JPT menerima MOU dan MOA daripada IPTA berdasarkan kepada perenggan 25 dan 26 di atas, **prosedur-prosedur berikut hendaklah dipatuhi:**

- (i) JPT akan membuat penelitian dari segi keperluan dan manfaat yang akan diperolehi melalui pemeeteraian MOU dan MOA tersebut dan sama ada ia selaras dengan dasar-dasar Kementerian dan Kerajaan yang sedia ada.
- (ii) Seterusnya, deraf MOU dan MOA tersebut akan dipanjangkan kepada PUU Kementerian untuk semakan perundangan. Sekiranya perlu, PUU Kementerian akan mendapatkan ulasan atau pandangan daripada Jabatan Peguam Negara. Selepas disemak, deraf MOU dan MOA tersebut akan dipulangkan kepada JPT untuk tindakan seterusnya.
- (iii) Selepas menerima deraf MOU atau MOA yang telah disemak oleh PUU Kementerian, JPT akan mengemukakan deraf tersebut untuk pertimbangan Y.B. Menteri.
- (iv) Dalam membuat pertimbangan tersebut, Y.B. Menteri mempunyai hak sama ada untuk menjalankan kuasanya secara bersendirian atau merujuk kepada Jemaah Menteri.
- (v) Sekiranya Y.B. Menteri membuat keputusan untuk merujuk terlebih dahulu kepada Jemaah Menteri, maka deraf MOU atau MOA tersebut akan dikembalikan kepada JPT bagi tujuan penyediaan Memorandum Jemaah Menteri dan kemudiannya dikemukakan semula untuk

pertimbangan Y.B. Menteri untuk dibentangkan di Mesyuarat Jemaah Menteri.

- (vi) Selepas keputusan Y.B. Menteri diperolehi, sama ada keputusan tersebut dibuat secara bersendirian atau secara kolektif oleh Jemaah Menteri, JPT akan mengembalikan MOU atau MOA tersebut kepada IPTA berkenaan untuk tujuan pemeteraian.
- (vii) IPTA hendaklah mengemukakan sesalinan MOU dan MOA yang telah dimeterai kepada JPT, Kementerian Pengajian Tinggi untuk tujuan rekod dan pemantauan, **selewat-lewatnya dua (2) minggu selepas MOU dan MOA tersebut dimeterai.**

28. Proses lengkap bagi kelulusan sesuatu MOU dan MOA seperti yang telah dinyatakan di **perenggan 22 – 27** di atas adalah sepertimana dalam carta aliran di **Lampiran B1** Pekeliling Pentadbiran ini.

29. Selain itu, penurunan kuasa seperti yang dijelaskan dalam Pekeliling Pentadbiran ini dan pemakaian **Lampiran A1, A2, A3 dan B1** bolehlah juga digunapakai ke atas MOU dan MOA yang dimeterai antara IPTA dengan universiti, institusi atau organisasi lain di dalam Malaysia.

PEMAKAIAN

30. Pekeliling Pentadbiran ini hendaklah diterimapakai dan dipatuhi oleh semua IPTA.

PEMBATALAN

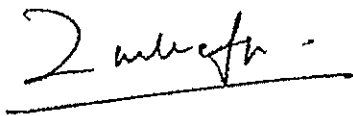
31. Dengan berkuatkuasanya Pekeliling Pentadbiran ini, pekelling yang dikeluarkan sebelum ini rujukan KP.S(PT)7411.Jld.3(18) bertarikh 31 Mei 2005 dan rujukan KP.S(PT)7411.Jld.3(2) bertarikh 14 November 2002 adalah dibatalkan.

TARIKH KUAT KUASA

32. Pekeliling Pentadbiran ini berkuat kuasa mulai tarikh ia dikeluarkan.

“BERKHIDMAT UNTUK NEGARA”

Saya yang menurut perintah,



(DATUK DR. ZULKEFLI BIN A. HASSAN)
Ketua Setiausaha

KEMENTERIAN PENGAJIAN TINGGI
MALAYSIA
PUTRAJAYA

Tarikh: (8 September 2008

MEMORANDUM OF UNDERSTANDING

BETWEEN

.....
(full name of the Malaysian University/Institute)

AND

.....
(full name of the Foreign University/Institute)

(ON))

THE(full name of the Malaysian University/Institute)..... (hereinafter referred to as “***”), an institution of higher learning established under the Universities and University Colleges Act 1971 whose address is at and shall include its lawful representatives and permitted assigns; **AND THE**(full name of the Foreign University/Institute)..... (hereinafter referred to as “***”), a (state legal status of Foreign University/Institute) whose address is at and shall include its lawful representatives and permitted assigns; (hereinafter referred to singularly as “the Party” and collectively as “the Parties”),

WHEREAS

- A. is an established University which strives to enhance and strengthen its and has taken various initiatives to compliment its educational excellence. has entered into various collaborative arrangements with other parties to enhance
- B. is an established (*state nature of the core business/strength of the Foreign University/Institute*);
- C. The Parties are desirous of entering into this Memorandum of Understanding to declare their respective intentions and to establish a basis of co-operation and collaboration between the Parties upon the terms as contained herein.

HAVE REACHED AN UNDERSTANDING as follows:

ARTICLE I

OBJECTIVE

The Parties, subject to the terms of this Memorandum of Understanding and the laws, rules, regulations and national policies from time to time in force in each Party's country, will endeavour to strengthen, promote and develop co-operation between the Parties on the basis of equality and mutual benefit.

ARTICLE II

AREAS OF CO-OPERATION

1. Each Party will, subject to the laws, rules, regulations and national policies from time to time in force, governing the subject matter in their respective countries, endeavour to take necessary steps to encourage and promote co-operation in the following areas:
 - (a)
 - (b)
 - (c) ; and

LAMPIRAN A1

- (d) any other areas of co-operation to be mutually agreed upon by the Parties.
2. For the purpose of implementing the co-operation in respect of any areas stated in paragraph 1 the parties will enter into a legally binding agreement subject to terms and conditions as mutually agreed upon by the Parties including clauses on "confidentiality", "suspension", "protection of intellectual property rights" and "settlement of dispute" as contained in Annexure A2 of this Memorandum of Understanding.

ARTICLE III

FINANCIAL ARRANGEMENTS

1. This Memorandum of Understanding will not give rise to any financial obligation by one Party to other.
2. Each Party will bear its own cost and expenses in relation to this Memorandum of Understanding.

ARTICLE IV

EFFECT OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding serves only as a record of the Parties' intentions and does not constitute or create, and is not intended to constitute or create, obligations under domestic or international law and will not give rise to any legal process and will not be deemed to constitute or create any legally binding or enforceable obligations, express or implied.

ARTICLE V

NO AGENCY

Nothing contained herein is to be construed so as to constitute a joint venture partnership or formal business organisation of any kind between the Parties or so to constitute either Party as the agent of the other.

ARTICLE VI

ENTRY INTO EFFECT AND DURATION

1. This Memorandum of Understanding will come into effect on the date of signing and will remain in effect for a period of(....) years.

2. This Memorandum of Understanding may be extended for a further period as may be agreed in writing by the Parties.

ARTICLE VII

NOTICES

Any communication under this Memorandum of Understanding will be in writing in the English language and delivered by registered mail to the address or sent to the electronic mail address or facsimile number of(*full name of the Malaysian University/Institute*) or the(*full name of the Foreign University/Institute*), as the case may be, shown below or to such other address or electronic mail address or facsimile number as either Party may have notified the sender and shall, unless otherwise provided herein, be deemed to be duly given or made when delivered to the recipient at such

LAMPIRAN A1

address or electronic mail address or facsimile number which is duly acknowledged:

To (Malaysian University/Institute): *(Name, Address, Electronic Mail Address & Facsimile Number of the Malaysian University/Institute)*

To (Foreign University/Institute): *(Name, Address, Electronic Mail Address & Facsimile Number of the Foreign University/Institute)*

LAMPIRAN A1

The foregoing record represents the understandings reached between the(*full name of the Malaysian University/Institute*).... and the(*full name of the Foreign University/Institute*)upon the matters referred to therein.

Signed in duplicate at on this day of in the year in(.....) original texts,(.....) each in the English and languages, all texts being equally authentic. In the event of any divergence of interpretation between any of the texts, the English text shall prevail.

FOR THE
(MALAYSIAN
UNIVERSITY/INSTITUTE)

FOR THE
(FOREIGN
UNIVERSITY/INSTITUTE)

.....

.....

ARTICLE...

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. The protection of intellectual property rights shall be enforced in conformity with the respective national laws, rules and regulations of the Parties and with other international agreements signed by both Parties.
2. The use of the name, logo and/or official emblem of any of the Parties on any publication, document and/or paper is prohibited without the prior written approval of either Party.
3. Notwithstanding anything in paragraph 1 above, the intellectual property rights in respect of any technological development, and any products and services development, carried out –
 - (i) jointly by the Parties or research results obtained through the joint activity effort of the Parties, shall be jointly owned by the Parties in accordance with the terms to be mutually agreed upon; and
 - (ii) solely and separately by the Party or the research results obtained through the sole and separate effort of the Party, shall be solely owned by the Part concerned.

ARTICLE...

CONFIDENTIALITY

1. Each Party shall undertake to observe the confidentiality and secrecy of documents, information and other data received from or supplied to, the other Party during the period of the implementation of this Memorandum of Agreement or any other agreements made pursuant to this Memorandum of Agreement.
2. For purposes of paragraph 1 above, such documents, information and data include any document, information and data which is disclosed by a Party (the Disclosing party) to the other Party (the Receiving party) prior to, or after, the execution of this Memorandum of Agreement, involving technical, business, marketing, policy, know-how, planning, project management and other documents, information, data and/or solutions in any form, including but not limited to any document, information or data which is designated in writing to be confidential or by its nature intended to be for the knowledge of the Receiving party or if orally given, is given in the circumstances of confidence.
3. Both Parties agree that the provisions of this Article shall continue to be binding between the Parties notwithstanding the termination of this Memorandum of Agreement.

ARTICLE...

SUSPENSION

Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Memorandum of Agreement which suspension shall take effect immediately after notification has been given to the other Party through diplomatic channels.

ARTICLE...

SETTLEMENT OF DISPUTES

Any difference or dispute between the Parties concerning the interpretation and/or implementation and/or application of any of the provisions of this Memorandum of Agreement shall be settled amicably through mutual consultation and/or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

**GUIDELINES FOR THE PREPARATION OF
A MEMORANDUM OF UNDERSTANDING (MOU)**

I. PURPOSE

These Guidelines serve to explain and lay out the standard provisions to the terms contained in a Memorandum of Understanding (MOU), for the purpose of ensuring uniformity in the preparation and implementation of MOUs in Public Institutions of Higher Learning ("IPTA") in Malaysia.

II. WHAT IS AN MOU

Instruments which are not intended to create (of their own force) legal rights or obligations, or legal relationships are termed "arrangements of less than treaty status". The most appropriate form for an arrangement of less than treaty status is often an MOU, although records of discussion, joint communiqués and exchanges of notes or letters recording understandings are also common. The most common name for non-legally binding instruments is "Memorandum of Understanding".

An MOU records international "commitments", but in a form and with wording that expresses an intention that it is not to be legally binding.

An MOU is used where it is considered preferable to avoid the formalities of a treaty including publication. For example:

LAMPIRAN A3

- Where there are detailed provisions which change frequently;
- Where the matters dealt with are essentially of a technical or administrative character;
- In matters of defence or technology where there is a need for such documents to be classified; and
- Where a treaty requires subsidiary documents to fill out the details.

The intention not to create legally binding rights and obligations should be reflected in a document of less than treaty status, thus:

(a) There should be a specific reference to the fact that the arrangement embodies the understandings of the parties:

- In a MOU, this may occur in a recital at the commencement of the document.
- Alternatively it may be incorporated as a substantive provision in the MOU, especially in the case of "hybrid MOUs".
- In an exchange of correspondence, this may be proposed in the final substantive paragraph of the initiating piece of correspondence and be confirmed in the complementary reply.

(b) It is becoming generally accepted international practice to show clearly by the form of the document and its terminology the intention either to create legally binding obligations or not. Therefore, provisions in MOUs should be cast as expressions of intent rather than as obligations in order to avoid it being a treaty.

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- (c) Certain terms can be considered for use to distinguish treaties and MOUs. The use of any terminology should nevertheless be guided by the intention of the parties and the underlying policies governing the instrument.
- (d) Arrangements should avoid formal preambles, although informally phrased opening recitals may be appropriate.
- (e) Any provision for the settlement of disputes should generally be in terms of amicable resolution.
- (f) It is Malaysian practice to alternate texts even for arrangements of less than treaty status. However the other party may have no fixed practice on this matter. Where it is decided to alternate texts, the Malaysian "alternate" of the arrangement must, by definition, show "Malaysia" first in the title, and in the opening recital (if any), and in the signature block. We would also expect that the "alternate" of the other party would have the name of the other party first in the title, opening recital (if any), and signature block. However, it is left to the other party to decide what "positioning" is adopted in its own alternate. Consequently, Malaysia will not object if the positioning that the other party adopts in its own alternate does not accord with Malaysian practice.

III. STANDARD PROVISIONS IN AN MOU

1. PARTIES TO THE MOU

(a) Parties must have the legal capacity to enter into the MOU.

(b) Status:

- If the Government of Malaysia – state the name of the Ministry representing the Government;
- If a statutory body – state the Act under which that statutory body was established; or
- If a company* - state the company registration no. and registered/business address; or
- If an association* - state the registered association no. and registered address.

**private individuals are not encouraged to enter into MOUs.*

**IPTA shall conduct a due diligence study on companies and associations before deciding whether to enter into an MOU or not.*

(c) To ensure that there would be no conflict of interest between the Parties.

2. PREAMBLE TO THE MOU

The Preamble should sufficiently reflect the intention of the Parties and sufficiently describe all prior events/transactions or verbal/oral accord between the Parties, if any.

3. OBJECTIVE

The objective of entering into this MOU shall be reduced into writing to reflect the intention of the Parties as regards the purpose of cooperation to be achieved.

4. AREAS OF CO-OPERATION

- (a) Areas of co-operation must be permissible under the IPTA's governing law, national laws and existing policies;
- (b) Areas of co-operation must be realistic and attainable;
- (c) Areas of co-operation may be specific or general; and
- (d) Areas of co-operation must not be detrimental or prejudicial to the interests of the IPTA and the country.
- (e) The areas of co-operation will be carried out and implemented upon the signing of a legally binding agreement upon terms and conditions mutually agreed upon by the

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Parties including clauses on "confidentiality", "suspension", "protection of intellectual property rights" and "settlement of dispute" as contained in Annexure I of this MOU.

5. FINANCIAL ARRANGMENTS

- (a) The IPTA must ensure that it does not accept or incur any financial obligation or liability either primarily or vicariously or through any act of indemnity;
- (b) However, the IPTA may incur reasonable costs incidental to the execution of the MOU; and
- (c) Caution must be exercised to avoid any provision that may hamper, obstruct or fetter the IPTA's future financial authority.

6. EFFECT OF MEMORANDUM OF UNDERSTANDING

The IPTA must ensure that there is no clause or provision which explicitly or implicitly gives rise to any legally binding obligation to either Party.

7. NO AGENCY

The IPTA must ensure that there is no clause or provision which expressly or impliedly creates any kind of impression or suggestion that one party is a partner, agent or associate of the other.

8. ENTRY INTO EFFECT AND DURATION

(a) The MOU should provide the entry into effect and duration of the MOU; and

(b) Any proposed extension to the duration of the MOU shall require the consent of the relevant authority of the IPTA.

9. NOTICES

The IPTA must ensure that communication be given or made in accordance with the provision and that the correct name of the contact person and address are stated.

10. SIGNATORY ON BEHALF OF THE IPTA

Authorised signatory for the IPTA should be the Vice Chancellor unless delegated to an authorized representative through a letter of delegation.

CARTA ALIRAN PROSES KELULUSAN MOU DAN MOA

