

MEMORANDUM OF AGREEMENT

BETWEEN

XXX

and

UNIVERSITI TEKNOLOGI MARA

This **AGREEMENT** is made as of the day of 31, December 2020

BETWEEN

XXX, a university established under the laws of Malaysia which for the purpose of this Agreement is represented by its having its address at (hereinafter referred to as "**XX**") of one part;

AND

UNIVERSITI TEKNOLOGI MARA, MALAYSIA, an institution of higher learning established under the Universiti Teknologi MARA Act 1976[Act 173], having its address at Chancellery, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia (hereinafter referred to as "**UiTM**") of the other part,

XX and UiTM hereinafter are collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:-

- A) XX and UiTM, shall be carrying out **joint organization of seminars, symposium, conference or public lectures, conducting and delivering short courses, joint research and development activities which may include sharing of facilities and equipment and matching of research grants, joint supervision of postgraduates' students, joint publications of research outcomes, exchange of publications, academic materials and other information and joint of community engagement activities** (delete or amend as necessary).
- B) UiTM and XX hereafter jointly referred to as collaborating centres/departments have agreed to collaborate specifically for the research and development.
- C) XX is an internationally renowned institution of higher learning in research, innovation, publication and teaching.
- D) UiTM is an established university with a track record of educational excellence and research and with a dynamic programme of collaborative arrangements with many international counterparts.
- E) Both Parties have agreed that this Agreement shall be operationalized on behalf of the Parties by the (Hereinafter referred to as "**XX**") and Faculty of, UiTM (Hereinafter referred to as "**FF-UiTM**").

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this Agreement, except insofar as the context or subject matter otherwise indicates or requires, the following terms and expressions shall have the following meanings:

“Agreement” shall mean the documents forming this Agreement together with all Schedules and/or Annexures to it, which such documents taken together shall be complimentary of one another;

“Background Intellectual Property” shall mean any Intellectual Property rights owned by the Party prior to the commencement of this Agreement and which is made available by a Party or Parties to carry out the research work in relation to the Project;

“Confidential Information” shall mean all information passing from a Party (“Disclosing Party”) to the other Party (“Receiving Party”) in this Agreement relating to the Project, including, without limitation to, (i) financial information, reports or findings, studies, consultations, methodologies, proposals, systems, programs, strategies, improvements, discoveries, innovations, inventions, trade secrets, drawings, know-how, source and object codes, arrangements and agreements with third parties, formulae, concepts not reduced to material form, designs, plans and models whether given orally or in writing (ii) any derivations of any information or data which embodies, contains or describes the Confidential Information, and (iii) any other data or information designated by the Disclosing Party to be confidential or relating to the current or prospective activities or businesses of the Disclosing Party. The Confidential Information shall also include such information or data that may be in the possession of a Party’s employees or management;

“Intellectual Property”	shall mean all rights in relation to inventions (including patents), registered and unregistered trademarks (including service marks), copyright, genetic trait loci, designs, registrable plant varieties, processes, know-how and confidential information in the industrial, scientific and artistic fields, including application or right to apply for registration of any of those rights;
“Project”	The project(s) listed in Schedule 1;
“Project Intellectual Property”	shall mean any Intellectual Property rights arising from or in the course of the implementation of the Project.

2. THE SCOPE OF THE AGREEMENT

- 2.1 In consideration of and subject to the terms of this Agreement and all applicable laws, XX and FF-UiTM shall carry out their respective portions of the Project.
- 2.2 Parties shall carry out the Project with due diligence and in conformity with sound technical practices and shall act at all times so as to protect the interest of both Institutions.
- 2.3 Joint Research and Development activities which may include sharing of facilities and equipment, and matching of research grants.
- 2.5 Joint Supervision of postgraduate students.
- 2.6 Joint Publications of research outcomes, exchange of publications, academic materials and other information.
(delete or amend as necessary)

3. EFFECTIVE DATE OF THE AGREEMENT

3.1 This Agreement shall be effective from the date of this Agreement for a period of **three (3) years** or until the completion of the Project, whichever is earlier.

4. OBLIGATIONS OF THE PARTIES

4.1 Each party hereby undertakes to use all reasonable endeavours to perform and enable the other parties to perform in time the tasks assigned to each party in the implementation of the Project, as defined in Schedule 1.

4.2 Obligations of UiTM:

4.3 Obligations of XX:

5. FINANCIAL ARRANGEMENT OF THE PROJECT

5.1 It is agreed that **both Parties shall be equally** responsible to procure financial grants/funds to conduct and complete the Project.

5.2 It is agreed that FIM-UiTM shall remit to XX funding and costs related to the Project that are the area of expertise, know-how and competence of XX, as defined in Schedule 1.

6. CONFIDENTIALITY

6.1 The parties shall take reasonable actions to keep confidential all Confidential Information and shall not communicate or divulge to any person or body or entity any Confidential Information nor publish or cause to be published any Confidential Information, unless prior written consent of the parties hereto has been duly obtained.

6.2 The obligations of confidentiality contained in this Agreement shall not apply to any information which:

- (a) is independently received from a third party who is free to disclose it; or
- (b) is in the public domain or is a compilation of materials in the public domain; and
- (c) is required by law for disclosure.

6.3 The following acts shall not be deemed to be a breach of the above, provided that all copies of information supplied are marked confidential and to be used only for the purpose supplied:

- (a) It has necessarily been disclosed by the Receiving Party to its customers or users or its sub-contractors for use, installation, repair, overhaul or other necessary works in relation to the Receiving Party's current or prospective activities or businesses; and
- (b) Its disclosure was necessary to bona fide sub-contractors and bidders to enable them to perform their contract or make bids to the Receiving Party.

6.4 The obligations of confidentiality survive the termination or expiry of this Agreement but in any event, shall expire five (5) years after the date of this Agreement.

7. **PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

7.1. 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 the government or the authorized organization in Malaysia.

7.2. The use of the name, logo and/or official emblem of any of the Parties as the case may be, on any publication, document and/or paper is prohibited without the prior written approval of either Party.

7.3. Notwithstanding anything in paragraph (i) above, the intellectual property rights in respect of any technological development, products and services development, carried out –

- (a) 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
- (b) 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 Party concerned.

7.4. Nothing in this Agreement shall be construed as granting, either expressly or by implication, to the other Party any rights to, or interest in, any inventions or works of a Party or its related entities made prior to the entry into force of, or outside the scope of this Agreement, including any patents (or similar forms of

protection in any country) corresponding to such inventions or any copyrights corresponding to such works.

- 7.5. Any rights to, or interest in, any invention or work made in the performance of this Agreement solely by one Party or any of its related entities, including any patents (or similar forms of protection in any country) corresponding to such invention or any copyright corresponding to such work, shall be owned by such Party or related entity. Allocation of rights to, or interest in, such invention or work between such Party and its related entities shall be determined by applicable laws, rules, regulations, and contractual obligations.
- 7.6. It is not anticipated that there will be any joint inventions made in the performance of this Agreement. Nevertheless, in the event that an invention is jointly made by the Parties in the performance of this Agreement, the Parties shall, in good faith, consult and agree within 30 calendar days as to:
- (a) The allocation of rights to, or interest in, such joint invention, including any patents (or similar forms of protection in any country) corresponding to such joint invention;
 - (b) The responsibilities, costs, and actions to be taken to establish and maintain patents (or similar forms of protection in any country) for each such joint invention; and
 - (c) The terms and conditions of any license or other rights to be exchanged between the Parties or granted by one Party to the other Party.
- 7.7. For any jointly authored work by the Parties, should the Parties decide to register the copyright in such work, they shall, in good faith, consult and agree as to the responsibilities, costs, and actions to be taken to register copyrights and maintain copyright protection (in any country).
- 7.8. The Parties shall have an irrevocable royalty free right to reproduce, prepare derivative works, distribute, and present publicly, and authorize others to do so on its behalf, any copyrighted work resulting from activities undertaken in the performance of this Agreement for its own purposes, regardless of whether the work was created solely by, or on behalf of, the other Party or jointly with the other Party

8. EXPLOITATION OF THE PROJECT INTELLECTUAL PROPERTY

- 8.1 Notwithstanding any other provisions to the contrary contained herein, any exploitation of the Project Intellectual Property shall be the subject matter of separate written binding agreements to be negotiated and agreed upon by both parties.

9 PUBLICATION

Notwithstanding any other provisions to the contrary contained herein and subject to Clause 6 (Confidentiality), either party may publish materials relating to the Project, Provided that:

- 9.1 All materials prepared for publication by a party (the 'Submitting Party') shall be forwarded to the other party for written permission to publish at least one (1) month prior to the submission for publication or disclosure to a third party, for which the written permission shall not be unreasonably withheld; and
- 9.2 If at any time during the said period of one (1) month the other party requests the Submitting Party not to proceed with the publication or disclosure of the material in the form submitted, then the Submitting Party will either :-
 - (i) amend the material as requested by the other Institution; or
 - (ii) delay the publication or disclosure until such time as the other party reasonably deems such publication or disclosure to be possible or appropriate in view of any commercially sensitive information contained therein.

10 OTHER ACTIVITIES

The existence of this Agreement shall not prevent either party from engaging in any other activities similar to or in competition with those of the subject matter of this Agreement, nor shall it prevent a party from developing or exploiting other services and/or processes, PROVIDED ALWAYS that either party shall not utilize any Background Intellectual Property belonging to the other party or Project Intellectual Property without obtaining the prior written consent of the other party.

11. ADVERTISEMENT

Either party shall, in making any public statement regarding the Project, or in relation to any information, product, process or invention developed as a result of the Project, as the case may be, include in such public statement, an acknowledgement of the services and cooperation received from the other party. However, each of the Parties undertakes that it shall not use the other party's name and logo in any such information, product, advertisement or publication without the prior written approval of the other party.

12 WARRANTIES

- 12.1 The parties shall ensure that the services and technical assistance provided by both Institutions in relation to this Agreement are provided with due care, diligence and skill reasonably expected of professional persons providing services of the kind described. The parties make no other warranty or assurances with respect to the services and technical assistance carried out in relation to this Agreement or to its quality, accuracy or suitability for any purpose.
- 12.2 It is the duties of both parties, to the best of their knowledge, to ensure that the IPRs related to the Project do not infringe any third party's intellectual property rights, to avoid any claims, losses, damages and/or costs suffered in the event of a breach of existing third party intellectual property rights.

13. LIABILITY

- 13.1 Each party shall not be liable to the other party for any loss nor damage arising from its failure to perform work on time or within estimated costs, provided that the said party has used its reasonable endeavours in all respects.
- 13.2 Each party shall indemnify and hold harmless the other party against all demands, claims, liabilities, losses, damages, legal costs and other expenses of any nature whatsoever, including infringement of any third party intellectual property rights which may be asserted against or suffered by the other Institution and which relate to or arise under this Agreement, but excluding any liability to the extent that results from the reckless misconduct or wilful default of the other party.

14. TERMINATION

- 14.1 Notwithstanding the provision of Clause 6, Clauses 7, 9, 10 and 12 shall survive and be of full effect after expiry or termination of this Agreement.
- 14.2 Notwithstanding anything contained in this Agreement, any party may terminate this Agreement for any reason whatsoever by giving at least three (3) months prior notice in writing to the other party and the parties shall consult each other to agree on a reasonable program of work for the notice period leading up to termination date.
- 14.3 If either party commits a breach of this Agreement, the other party may request in writing that the breach be remedied. If the party committing

the breach does not remedy it within thirty (30) days, then the other Party may terminate this Agreement immediately without further notice.

- 14.4 Any termination of this Agreement pursuant to Clauses 14.3 or 14.4 shall be without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.
- 14.5 Upon termination or expiry of this Agreement, the party shall forthwith cease all research works.
- 14.6 Termination shall not affect any right which either party has accrued up to and on the termination date.

15. PERSONAL DATA PROTECTION

- 15.1 Each party undertakes to the other that, in connection with the provisions of this Agreement, it will at all times comply with the applicable legislation, regulations and other rules having equivalent force including the Personal Data Protection Act 2010 (Relevant Legislation).
- 15.2 For the purpose of this Agreement, the terms “Data Subject”, “Processing” and “Personal Data” shall have the same meaning as ascribed in the Personal Data Protection Act 2010.
- 15.3 In relation to the data protection, the parties shall in addition to the general obligations under this Agreement and without prejudice to any other provisions of this Agreement:
 - a) process such Personal Data in accordance with the terms of the Relevant Legislation;
 - b) comply with the rights of the individuals to whom the provisions of this Agreement relate as required under the Relevant Legislation;
 - c) transfer such Personal Data in accordance with the provisions of the Relevant Legislation;
 - d) To not do anything in relation to the personal data that could cause the other party to be in breach of any of its requirements under any Relevant Legislation in force at any point in time.
- 15.4 By way of execution of this Agreement, the parties hereby acknowledge and consent to the Processing of any relevant Personal

Data provided in connection with this Agreement by either Party and all its subsidiaries and/or associate companies (if required).

- 15.5 Notwithstanding 15.4, the parties may withdraw its consent by giving not less than fourteen (14) days' written notice to either party.
- 15.6 Each party warrants that it has in place and undertakes to maintain throughout the terms of this Agreement, appropriate technical and organisational measures against the accidental unauthorised access or unlawful processing, destruction, loss, damage or disclosure of Personal Data and adequate security programmes and procedures to ensure that unauthorised persons do not have access to any equipment used to the Processing of the Personal Data.
- 15.7 No party is allowed to use any Personal Data it receives in connection with this Agreement other than for the performance of obligations under this Agreement and in compliance with the Relevant Legislation.

16. DISPUTE SETTLEMENT

If there is a dispute between the Parties then:

- 16.1 the Parties must discuss the dispute initially with a view to settling the dispute amicably; then
- 16.2 In the event that the Parties are unable to agree on any settlement or arrangement, either Party may take the dispute to a court of law.

17. GENERAL

- 17.1 No Party shall assign all or any of its rights hereunder without the prior written consent of the other Party.
- 17.2 This Agreement shall be read and construed according to the laws presently in force in Malaysia. The Parties agree to submit any dispute that may arise in relation to this Agreement to the jurisdiction of the Courts of Malaysia following unsuccessful amicable settlement.
- 17.3 Any amendment, revision or change to the terms of this Agreement must be in writing, mutually agreed on and signed by the Parties.
- 17.4 Should any provision of this Agreement be held by a Court of law to be unlawful, invalid, and unenforceable or in conflict with any rule, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be thereby affected.

- 17.5 Any notice approval, consent, request or other communication required or permitted to be given or made under this Agreement shall be in the English language and shall be delivered to the address or facsimile number of the party shown below or to such other addresses or facsimile numbers as may be notified in writing by the Institution from time to time. Any notice sent by hand or facsimile transmission shall be deemed to have been received within twenty-four (24) hours from the time it was dispatched and in the case of service by A.R. Registered post, shall be deemed to have been received within seven (7) days after posting:

if to XX

Address :

Tel No. :

Facsimile No :

Attention :

If to Universiti Teknologi MARA :

Address :

Tel No. :

Facsimile No:

Attention :

- 17.6 Nothing in this Agreement shall be construed as establishing or creating a partnership or a relationship of master and servant between any of the Institutions hereto or as constituting any party as an agent or representative of the other party for any purpose or in any manner whatsoever.
- 17.7 (a) The waiver by a party in respect of any breach of a term of this Agreement by the other party shall not be deemed to be a waiver in respect of any other terms or of any subsequent breach of that term.
- (b) The failure of a party to enforce at any time any term of this Agreement shall in no way be interpreted as a waiver of such term.
- 17.8 This Agreement constitutes the entire agreement between the Institutions. Any prior arrangements, agreements, representations or undertakings are hereby superseded.

17.9 The parties shall not be bound by any amendment of or addition to this Agreement except where the Institutions have agreed expressly in writing to be so bound.

17.10 (a) If either party to this Agreement is temporarily unable by reason of *force majeure* or the Government intervention to meet any of its obligations under this Agreement, and if such party gives to the other party a prior written notice of the event within fourteen (14) days after its occurrence, such obligations of the party as it is unable to perform by reason of the event shall be suspended for as long as the inability continues.

(b) Neither party shall be liable to the other party for loss or damage sustained by such other party arising from any event referred to in sub-clause 16.10 (a).

(c) The term "*force majeure*" as employed herein shall mean acts of God, strikes, lock outs or other industrial disturbance, war, insurrection, riots, epidemics, pandemics, landslides, earthquakes, storms, lightning, floods, civil disturbances, explosions, and any other similar events not within the control of either Institution and which by the exercise of due diligence neither Institution is able to overcome.

17.11 In this Agreement except to the extent that the context otherwise requires:

(a) words denoting the singular include the plural and vice versa;

(b) words denoting individuals or persons include bodies corporate and vice versa;

(c) headings are for convenience only and shall not affect interpretation;

(d) reference to any document or agreement includes reference to such document or agreement as amended, supplemented, varied or replaced from time to time;

(e) words denoting any gender include all genders; and

(f) where any word or phrase is given a defined meaning in this Agreement any part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.

18. SCHEDULE

Schedule 1 - Project Details, shall form part of this Agreement.

IN WITNESS WHEREOF the Parties have hereto caused this Agreement to be signed in their respective names on the day and year first above written.

SIGNED for and on behalf of
XXX

SIGNED for and on behalf of
**UNIVERSITI TEKNOLOGI
MARA**

.....

.....

Vice Chancellor

Vice Chancellor

In the presence of:

In the presence of:

.....
Name:

.....

Designation:

Dean

**APPENDIX
PROJECT DETAILS**

Activity/Project Title

Description

Members

XXX

UiTM
