



MEMORANDUM OF UNDERSTANDING

BETWEEN

SOUTH EASTERN KENYA UNIVERSITY

AND

NATIONAL MUSEUMS OF KENYA

9th February 2016

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as “MoU”) is made on the **NINTH** day of **FEBRUARY 2016** BY and BETWEEN:-

SOUTH EASTERN KENYA UNIVERSITY, a Public University established to offer higher education, situated in Kitui County and of P.O. Box 170 – 90200 (hereinafter referred to as “**SEKU and/or the University**”) of the one part;

AND

NATIONAL MUSEUMS OF KENYA, situated at Museum Hill and of P.O. Box 40658-00100, Nairobi (hereinafter referred to as (“**NMK**”) of the other part;

WHEREAS:

SEKU is a public university established under the Universities Act No 42 of 2012 to be an institution of higher learning with its mandate being to offer university education, conduct research and extension services. Its mission is thus to conserve, create and disseminate knowledge through training, research, innovation and community outreach. It is currently structured into five schools through which it administers its various programmes and envisages to participate in this collaboration through all its Schools so as to bring in its diverse fields namely: - the School of Natural Resources and the Environmental Studies; the School of Agriculture & Bio-technology, the School of Business, the School of Pure and Applied Sciences, and the School of Education and Social Sciences.

NMK is a state corporation established under the National Museums and Heritage Act, No. 6 of 2006 as a multidisciplinary institution whose mandate is to serve as national repositories for things of scientific, cultural, technological and human interest and undertaking research and dissemination of knowledge in all fields of scientific, cultural and natural heritage, technological and human interest. NMK’s collection and associated research attract large numbers of local and international visitors and scholars making it a regional hub and centre of excellence in cultural and natural history research. NMK is the national scientific authority for the Convention on International Trade in Endangered Species of Flora and Fauna, the Convention on Biological Diversity, Ramsar Convention and focal point for the Global Taxonomic Initiative.

Thus both partners recognize the need to have common objectives and work together to:

- i. Complement each other’s efforts in training, research and extension, whilst establishing modalities for collaborative partnership of the two institutions in furtherance of their common objectives.
- ii. Conduct research, document and build capacity in the following thematic areas:
 - a. Biology and biodiversity
 - b. History and cultural heritage
 - c. Environment management and sustainability
 - d. Earth Sciences
 - e. Research dissemination and outreach.

- iii. Jointly publish in the public interest and mutual benefit results of collaborative research.
- iv. Jointly develop innovation and/or intellectual property that may be developed in the course of collaborative work.
- v. Jointly fundraise on mutually beneficial programmes
- vi. Grant each other access to their collections, expertise, equipment, laboratories, libraries and other relevant facilities.
- vii. Recognize each other's staff and enhance sharing of inherent expertise.

NOW THEREFORE SEKU and NMK have agreed to enter into an understanding on the terms and provisions as set out hereunder.

1. DEFINITIONS AND INTERPRETATIONS

In this MoU and unless inconsistent with the context, or otherwise specified, the following words and phrases shall have the meanings set out below:-

- a) **"SEKU"** means South Eastern Kenya University;
- b) **"NMK"** means National Museums of Kenya;
- c) **"JMC"** means Joint Management Committee;
- d) **"Effective Date"** means the date of execution of this MoU;
- e) **"Force Majeure"** means force/situation not caused by nor within the control of either party or which neither party is able to overcome;
- f) **"Intellectual property rights"** means right to possess or control intellectual property such as trademarks, copyrights, patents and trade secrets;
- g) **"Party emblem or logo"** means a sign or symbol unique to the party and which the party identifies itself with;
- h) **'Brand name'** means the party's trade name;
- i) **"MoU"** means this Memorandum of Understanding as amended or modified from time to time by the mutual consent of the parties in accordance with the procedure contained in clause 21 below;
- j) Any reference in this MoU to a party shall mean either SEKU or NMK, and any such reference to parties shall, as the case may be, mean all or any of them;
- k) The headings in this MoU are inserted for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer;
- l) Words indicating the singular number shall include the plural and vice versa, and words indicating the masculine shall include the feminine and neuter and vice versa;
- m) The citations in this MoU and appearing as part of this MoU form part of and shall be deemed to be incorporated in this MoU;
- n) References to clauses and sub clauses are to clauses and sub-clauses of this MoU and the words "hereunder" "hereof", "hereto" and "herein" and words of similar meaning shall be deemed to be references to this MoU as a whole and not to any particular clause of this MoU.

2. AREAS OF COLLABORATION

2.1 Collaboration among the institutions will be established within the above thematic areas, specifically:-

- i. Curriculum development;
- ii. Teaching, research and skills transfer;
- iii. Exhibition and extension
- iv. Museums and Botanic Garden development and management;
- v. Capacity building ;
- vi. Student attachments and internships;
- vii. Cultural product development;
- viii. Earth Sciences
- ix. Joint grant proposal writing

2.2 Where one collaborating institution does not have the ready capacity to cover a field of interest requested by the other, the requested institution will facilitate such a request by identifying and recommending another institution to the requesting party.

3. MODALITIES OF COLLABORATION

The institutions shall collaborate as outlined:-

3.1 Curriculum Development

Collaborate in development of both undergraduate and postgraduate programmes.

3.2 Teaching, research and skills transfer

- i. Jointly develop teaching modules.
- ii. Jointly develop research proposals in areas of interest to both institutional and explore for sources of funding for such proposals.
- iii. In the case where a joint research project has been proposed by either party, efforts will be made to evaluate the needs for participating staff, and the location of the research activities. If a decision is made by both parties to approve the proposed project as a possible joint effort, both institutions will agree to actively seek funding for the proposed joint research project. Every joint research project will have a counterpart supervisor from amongst the qualified staff from both institutions.
- iv. share information about ongoing research activities in order to facilitate collaboration between professionals working within the same fields.
- v. Any collaborative research and development shall be published in the public interest as mutually agreed upon.
- vi. The utilization of research results and other benefits arising from collaborative projects shall be determined jointly on a case by case basis.
- vii. Any part of collaborative research undertaken shall be jointly owned.
- viii. The mode of ownership of research materials and research findings shall be spelt out clearly at the commencement of participation of each party and the prevalent regulations of each party.

- ix. Complement each other in the generation, documentation and dissemination of information in the various areas of collaboration.
- x. Develop and implement programmes in biodiversity conservation, taxonomy, environment, indigenous knowledge systems, technologies and innovations.
- xi. Qualified staff of NMK to be enjoined where necessary in the teaching and supervision of SEKU undergraduate and postgraduate students.

3.3 Exhibition and extension

Jointly develop thematic exhibitions for outreach and awareness creation

3.4 Museums and Botanic Garden development and management

The institutions will collaborate in:

- i. Specimen/object gathering, curation and storage.
- ii. Development of a Botanic Garden (s)
- iii. Establishment of a herbarium.
- iv. Establishment of zoological collections
- v. Establishment of ethnographic museum

3.5 Capacity Building

Both parties agree to:-

- i. Recognize credentials of staff of either parties and appoint them as adjunct staff and facilitate utilization of their expertise as required.
- ii. Collaborate in students/staff development programs at all levels.
- iii. Identify and organize staff training workshops and seminars.
- iv. Identify and source for funding for collaborative activities.
Jointly develop short training courses, for example in pest and pollinator identification and management, herbarium techniques, Botanic Garden and Museum management, arid land conservation, entomology, mammalogy, ornithology, ecotourism related courses and field/summer school courses.

3.6 Student attachments and internship

- i. Provide opportunities as capacity may allow for students and staff of either institution to train on skills improvement in the courses and training programs of either of the institutions.
- ii. Provide opportunity for student attachments and internships under specific agreements.

3.7 Cultural research and product development

- i. Develop and implement programmes in sustainable development, cultural conservation and indigenous knowledge systems, technologies and innovations and climate change adaptation/ coping mechanisms.
- ii. Both institutions shall participate and promote unique cultural tourism product development.
- iii. Develop teaching cultural laboratories

3.8 Earth Sciences

- i. Develop and implement programmes in paleontological and climate change research and monitoring

- ii. Develop programmes in archeology

3.9 Joint grant proposal writing and income generation

- i. Individuals and/or groups working in partnership may respond to grant calls to obtain funding for collaborative activities. Such initiatives shall be supported by both institutions.
- ii. Similarly, partners can apply for grants in their institutional capacities.
- iii. Propose and develop income generating projects.

4. PRINCIPLES OF COLLABORATION

- i. The Parties enter into this MoU guided by mutual respect for each other, mindful that each is independent of the other, and in this regard, each party shall respect the mission and mandate of the other.
- ii. In entering into this MoU each Party is aware that this MoU is not legally binding, but is meant to express a strong commitment to collaborate as set out in this MoU.

4. ADMINISTRATION OF THE MoU

The MoU shall be administered by a joint management Committee (JMC). Each of the Institutions shall appoint two of its representatives to the Committee. The role of the JMC shall be:

- i. To work out a mechanism of reviewing and evaluating the impact of the MoU every year and at the end of the MoU duration.
- ii. To coordinate the activities of both institutions for joint project identification and sourcing for funds.
- iii. To monitor implementation of any on-going activities by evaluating progress reports of the steering committees that are running the activities.
- iv. To advise various departments/schools/faculties/centers of both institutions on available areas of collaboration.

6. SPECIFIC SUBSIDIARY AGREEMENTS

- i. Without prejudice to their respective roles and obligations under this MoU the Parties may enter into further definitive legal agreements to give effect to any provision of this MoU.
- ii. Any agreement or agreements entered into pursuant to sub-clause 6.1 shall specify at least the following details:-
 - a. Nature of the respective collaborative project.
 - b. Objectives and duration of project.
 - c. Terms of reference of the activities to be undertaken by each party
 - d. All financial terms and conditions applicable to each party.
 - e. Any other provisions as may be applicable in the specific circumstances.
 - f. Each subsidiary agreement shall be signed by the authorized officers of the Parties or their designated representatives duly authorized to contract for the Parties.

7. INDEPENDENCE AND LIABILITY OF THE PARTIES

- i. This MoU shall not be deemed to create any joint venture, joint liability partnership, association or company of any sort between the parties, nor shall any party be deemed an agent of the other. The parties shall be independent of each other and the relationship between them shall be that of two independent contractors.
- ii. Each party shall be responsible for its own actions and omissions and shall indemnify the other party in respect of any loss, claim or damage suffered as a result of its negligence, willful conduct, breach of or omissions under the MoU.

8. ACCREDITATION OF PARTIES

Where staff of the NMK will be involved in teaching activities at SEKU, they shall be recognized by the university as adjunct faculty staff; **NMK** shall provide **SEKU** research counterparts with appointments as Research Associates in accordance with each institution's guidelines as detailed below:

NMK:

Research Scientist:
Senior Research Scientist:
Principal Research Scientist:
Chief Research Scientist:

SEKU

Lecturer
Senior Lecturer
Associate Professor
Professor

9. GOOD FAITH AND FAIRNESS

- i. The parties undertake to act in good faith with respect to each other's rights and obligations under the objectives of this MoU.
- ii. The parties, their representatives, their researchers and personnel shall not, either during or after the term of this MoU disclose any proprietary information relating to the undertaking by both parties and each other's operation without the consent of the other party.
- iii. The parties recognize the impracticability of providing for every contingency, which may arise during or after the life of the MoU and hereby agree to operate fairly and without detriment to the interests of either of them.
- iv. The parties shall exchange all necessary legal documents of incorporation and keep each other informed of any changes thereafter.

10. INSURANCE

Each party shall ensure that the insurance arrangements applicable to its operational business activities shall extend to the activities undertaken by its employees in conjunction with this MoU.

11. LIABILITY AND INDEMNITY

- i. Each Party shall be solely responsible for payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of this MoU.
- ii. Each Party agrees to indemnify the other party against, and to hold it harmless from, any claim for damages, demand for performance or any other matter or thing arising out of any act or omission of such party, its employees or agents with respect to this MoU including all claims, loss costs, damages and expenses, including advocate's fees made against or incurred by the other party in any proceedings instituted against such party in connection with the acts or omissions of the other party as the case may be under this MoU.

12. EFFECTIVE DATE

This MoU shall become effective on the date of execution by both parties.

13. DURATION OF THE MoU

The duration of the MoU shall be a period of five (5) years at the end of which both parties will review the collaboration and may be amended or extended by written consent of both parties.

14. BENEFIT SHARING

Benefits accrued from joint ventures under this MoU will be shared on the basis of specific agreements and services rendered by respective parties.

15. ASSIGNMENT

- i. Neither party shall assign, transfer, pledge or make other disposition of the benefits of this MoU or any part thereof, or any of its rights, claims or obligations under this MoU except with prior written consent of the other party.
- ii. Except as expressly provided herein none of the terms of this MoU are intended to confer any benefit to any third party and the terms of this MoU may only be enforced by the parties hereto.

16. CONFIDENTIALITY AND ANNOUNCEMENTS

- i. Each of the parties shall keep confidential and shall not disclose to any other person, nor use for any purpose except the purposes of the collaboration any information obtained from the other party as a result of negotiating, entering into or implementing the collaboration other than information which:-

- a. Is required to be disclosed by operation of law or by any binding judgment or order or any requirement of a competent authority.
- b. Is reasonably required to be disclosed in confidence to a party's professional advisers for use in connection with the collaboration and/or matters contemplated herein.
- c. Is or becomes within the public domain (otherwise than through the default of the recipient party)
- ii. No public announcement or press release in connection with the subject matter of this memorandum of understanding shall be made or issued by or on behalf of either party without the prior approval of the other, except such as may be required by law or by any governmental authority.
- iii. Each party shall take all reasonable precautions to ensure that this MoU and/or the information contained herein shall not be disclosed to third parties, unless otherwise agreed in writing between the parties.

17. INTELLECTUAL PROPERTY RIGHTS

- i. Neither party anticipates a situation arising from this partnership which will require the transfer or exchange or use of the other party's intellectual property rights. On that basis nothing in this MoU transfers any intellectual property rights between the parties.
- ii. In furtherance of their collaborative research ventures, both parties shall be required to enter into a collaborative agreement which should contain:
 - a. Joint obligations of the parties;
 - b. Description of each party's role to the collaborative research venture;
 - c. Provision on who owns the intellectual property emerging from the research venture;
 - d. Details of licenses from various parties to use preexisting technology;
 - e. Details of the materials that need to be transferred for the research project to materialize;
 - f. Allocation of financial returns from the use or license of emerging technology and payment terms.
- iii. If any situations requiring transfer of intellectual property rights arise, the parties will enter into an agreement at that time to deal with those situations.
- iv. For the avoidance of doubt neither party is permitted to use any posters, labels, packaging, photographs, marketing or educational materials or any other document bearing the party emblem, brand name or logo of the other party following termination of this MoU or beyond a time otherwise specified in the respective definitive agreements.

18. GOVERNING LAW

This memorandum of understanding shall be governed by the laws of Kenya.

19. TRANSACTION COSTS

- i. Each party shall be responsible for its own costs and expenses incurred in connection with this MoU and the negotiation and formalization of any definitive legal agreements and other transactional documents.
- ii. Unless jointly approved in writing, any costs arising from any direct collaboration between parties will be borne by the party that incurs them

20. CONFLICT

In the event of a conflict between the terms hereof and the terms of the definitive legal agreements, the terms of the definitive agreements shall prevail.

21. AMENDMENT

This MoU may be revised or amended from time to time by mutual consultation and consent between the parties. Any such amendment shall be in writing and signed on behalf of each party by the authorized officer of that party.

22. DISPUTE RESOLUTION

- i. In the event of any dispute arising between the parties touching on any provision of this MoU the parties shall use their best endeavours in good faith to resolve such dispute.
- ii. Any dispute arising from or in connection with this MoU that is not resolved by mutual agreement of the Parties shall subject to clause i above will be resolved in the courts in Kenya.

23. TERMINATION

- i. Either party may terminate this MoU at any time by serving not less than 4 weeks' notice of termination in writing on the other party save that either party may terminate this MoU in writing with immediate effect if one party in its absolute discretion determines that association with the other party will adversely affect the status, reputation or neutrality of the first party. The termination of this MoU also terminates any definitive legal agreements relating to specific projects that the parties may enter into under this MoU.
- ii. In the event of such termination of the MoU any on-going activity under the collaboration shall be dealt with as shall be mutually agreed by the two institutions.
- iii. Where such activity involves students, the parties guarantee that students will be allowed to complete their studies.
- iv. In the event of an early termination of this MoU the activities hereunder shall be brought to a prompt and orderly conclusion. Each party shall immediately cease use of the other party's name, Logo, trademark and/or other association.

- v. The termination of this MoU shall not affect any activities undertaken or any rights, obligations or liabilities accrued by either of the parties prior to the termination.

24. FORCE MAJEURE

If at any time during this MoU it becomes impossible for one of the parties to fulfil its obligations for reasons beyond its control (force majeure) the party must notify the other party of the existence of force majeure. The party submitting such notification is released from its obligations for as long as the force majeure continues to exist. If the force majeure continues to subsist for a period of 30 days and either party believes that the success of the project is threatened for reasons beyond its control, it is entitled to terminate the project with the obligation to inform the other party in writing as soon as possible.

25. ENTIRE MoU

- i. This MoU supersedes all other MoUs whether written or oral between SEKU and NMK in relation to this initiative.
- ii. The parties acknowledge and warrant to each other that they are not entering into this MoU in reliance upon any representation not expressly set out herein and this MoU constitutes the entire MoU between the parties and this MoU shall not be amended, modified, varied or supplemented except in writing signed by duly authorized representatives of the parties. This MoU may only be amended by a document signed by both parties.

26. CONTACT PERSONS

- i. Each Party shall provide a duly authorized senior officer to act as the contact person for the respective party for purposes of facilitating, planning, feedback and supporting the implementation of this MoU.
- ii. Whenever under the terms of or in connection with this MoU any notice or other information is proper or required to be given to any of the parties hereto, such notice or other information shall be given by sending the same in writing by e-mail, registered mail, postage prepaid or courier addressed to the appropriate party to the attention of the respective contact person at the address set forth below, or at such other place and by such other means as such party may in writing designate.

The contact persons of the parties shall be the following:-

SOUTH EASTERN KENYA UNIVERSITY

| | |
|---------------|------------------------------|
| Name: | Professor Geoffrey M. Muluvi |
| Designation: | Vice Chancellor |
| Address: | P.O. Box 170-90200, Kitui |
| Telephone No: | +254 729721200 |

E-mail:
Website:

info@seku.ac.ke
www.seku.ac.ke

NATIONAL MUSEUMS OF KENYA:

Name: Dr. Mzalendo N. Kibunjia
Designation: Director General
Address: P.O. Box 40658 NAIROBI
Telephone No: +254-20-3742161-4
E-Mail: dg@museums.co.ke
Fax: 254- 20-3741424
Website: www.museums.co.ke

IN WITNESS WHEREOF, this MOU has been duly executed by the Parties hereto, the day and year first hereinabove mentioned.

SIGNED FOR AND ON BEHALF OF SOUTH EASTERN KENYA UNIVERSITY

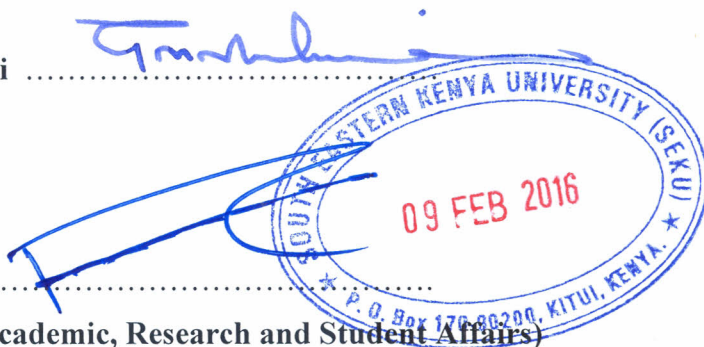
Professor Geoffrey M. Muluvi

Vice Chancellor

WITNESSED BY

Professor Zipporah Nganga.....

DEPUTY Vice Chancellor (Academic, Research and Student Affairs)



SIGNED FOR AND ON BEHALF OF NATIONAL MUSEUMS OF KENYA

Dr. Mzalendo N. Kibunjia, EBS.....

Director General

WITNESSED BY

Dr. Geoffrey Mwachala.....

Director of Research and Collection

