

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SOUTH EASTERN UNIVERSITY COLLEGE, KENYA
AND THE CHULUNI HORTICULTURAL FARMERS PROJECT (CHFP), KITUI,**

This **MEMORANDUM OF UNDERSTANDING** executed this the ____ day of May, 2011, (“the effective date”) by the South Eastern University College, hereinafter referred to as “SEUCO,” a body corporate duly established by the South Eastern University College Act (Chapter 210, Laws of Kenya) and the CHULUNI HORTICULTURAL FARMERS PROJECT, hereinafter referred to as “CHFP” a CBO duly registered in Ministry of Culture and Social Services.

WHEREAS, these two institutions wish to create and expand a basis for friendship, collaborative research and educational exchange between scholars at the South Eastern University College and researchers at CHULUNI HORTICULTURAL FARMERS PROJECT; and,

WHEREAS, the South Eastern University College has, *inter alia*, as one of its objects to provide, directly or in collaboration with other institutions of higher learning, facilities for University education, including technological and professional education and research, and discovery and transmission of knowledge

WHEREAS, the mission, purpose and goal of CHULUNI HORTICULTURAL FARMERS PROJECT is, among other things, to undertake research and disseminate best practices for the development of the Arid and Semi-Arid Lands and,

WHEREAS, the two institutions have a commitment to transform lives, among other things, by bridging the Research-Practice Gap

WHEREAS, the two institutions possess certain skills and technology which can aid in achieving the objective of this collaboration; and,

WHEREAS, both the South Eastern University College and CHULUNI HORTICULTURAL FARMERS PROJECT have the objective of collaborating in research, scientific training, academic staff, student attachments and extension; and,

WHEREAS both institutions believe that mutual benefit can be derived from scholarly interaction, co-operative research and other forms of academic collaboration based on mutual understanding, reciprocity and equal partnership;

WHEREAS both institutions are interested in seeking ways to expand their collaborative relationship in teaching, research and service, and see this Memorandum of Understanding as a model for such endeavors in the future;

NOW THEREFORE the parties agree as follows:

ARTICLE 1: AREAS OF COLLABORATION

- 1.1 Capacity building and Extension Services. Training of CHFP staff, training of the management committee on project planning, management and entrepreneurship
- 1.2 Participate in research where SEUCO and CHFP can develop joint project proposals and source funding for research
- 1.3 Conduct joint research activities within the fields of study to be mutually agreed and subject to availability of funds
- 1.4 Involvement on product development where SEUCO will determine the shelf-life of carrot, avocado and papaya juice before CHFP can begin processing these juices
- 1.5 Seeking ways in which cereals (Sorghum and Millets) can be considered in a separate initiative to reintroduce them, boost their production and add value
- 1.6 Student internships between SEUCO and CHFP

ARTICLE 2: OBLIGATIONS

- 2.1 The parties agree to jointly solicit for funds including donor funds, research grants, contributions, subscriptions and such related funds for the purpose of realizing any or all the objectives of the collaboration.
- 2.2 The two parties further agree to bear the cost of administering the collaborative program in a reciprocal manner and on such terms as follows;
 - i) Laboratory and office space, logistical support, housing and accommodations to be provided to visiting scholars at the expense of the host institution for the period of their visit.
 - ii) Students, upon registration, to be helped access to accommodation at appropriate student hostels and/or student housing.
 - iii) Field expenses to be borne jointly by the two parties.
 - iv) International Travel expenses to be borne jointly by the parties.
- 2.3 Title and custody of any equipment acquired in the course of the collaboration shall remain in the custody of the host institution upon the expiration of the particular project.
- 2.4 The parties agree that they shall make and/or abide by the rules governing the use of their respective facilities, including laboratories, library and workshops where such facilities are used for conduct of any of the functions of this collaboration.
- 2.5 Both parties jointly and severally agree to make available suitable facilities and personnel as and when required, and to mutually agree upon terms for any fees, remuneration, insurance, and any other incidentals thereto for the purposes of implementing the objectives of the collaboration.
- 2.6 The parties shall share both in the gains and losses of the collaboration including skills, inventions/ patents, profits, whether pecuniary or otherwise, and further agree that each shall be fully and properly indemnified at all times against all damages to or losses of

any of their respective facilities resulting from the fault of their respective agents and/or employees.

ARTICLE 3: INTELLECTUAL PROPERTY

- 3.1 Unless the parties otherwise agree, no party shall individually and without prior notice and consent of the other file or obtain whether in, Kenya or elsewhere and anywhere, any Intellectual Property Rights over any research material or information under this Memorandum, including properties, derivatives or processes that may utilize the knowledge of local communities regarding any product or process, even if such process has been modified to a more sophisticated level by synthetic or any other method. Such Intellectual Property shall be in any event jointly owned by both parties.
- 3.2 The inventors named in any patent application shall depend on the degree of contribution and subject to the patent laws of the jurisdiction, may be scientists affiliated with the parties hereof or people who have provided biological samples that may have led to the development of the Intellectual Property Rights protected product.
- 3.3 Any patents arising from such collaborative research shall be jointly applied for and remain the joint property of the parties, with any revenues arising from commercialization of the products being jointly shared.
- 3.4 Both parties shall have joint right to license program inventions for commercial exploitation.

ARTICLE 4: BIOLOGICAL MATERIALS

- 4.1 Joint ownership. All Biological Materials arising from, produced from, discovered in connection with or developed under this contract, or obtained by a partner for furtherance of the research shall be jointly owned by the collaborating parties, except to the extent such Biological Materials are documented to be owned by third parties.

Notwithstanding the expiration or determination of this memorandum, all material shall be kept in safe custody in accordance with and under any conditions mutually agreed by the parties in writing.

- 4.2 Right to use. Subject to the provisions of this MOU, each institution shall have the right to use the Biological Materials for its own academic, non-commercial research purposes.
- 4.3 Distribution to Third Parties. Distribution or transfer of Biological Materials to third parties shall be done only for academic, non-commercial research purposes, upon consultation between CHULUNI HORTICULTURAL FARMERS PROJECT and the South Eastern University College.

ARTICLE 5: MATERIAL TRANSFER AGREEMENT

Any and all materials transferred between the parties shall be subject to an acceptable material transfer agreement, signed by the parties and appended to the Memorandum of Understanding.

ARTICLE 6: PUBLICATIONS

- 6.1 Both collaborating parties shall review each publication or material to be presented (i) to prevent disclosure of patentable inventions before applications can be filed, or (ii) to identify or to correct any inadvertent disclosure of Proprietary Information or use of the institution's name which each institution, in its sole discretion, considers inappropriate. In such publication, donor/financing organization/body shall be acknowledged for the financial assistance to the collaborating partners.
- 6.2 In all activities, publications and seminar presentations undertaken or arising from pursuant to this project both the names of the parties must be acknowledged. Such acknowledgement shall include, but will not be limited to, display in equal prominence of the full names and symbols and/or logos of both parties on all materials.

ARTICLE 7: RESEARCH INFORMATION RELEASE

Both parties will make all results of the research undertaken under this project that shall not be protected available in the public domain upon execution of a mutually agreed and written release.

ARTICLE 8: PROPRIETARY INFORMATION

- 8.1 Both parties agree not to disclose Proprietary Information except on a need to know basis to persons subject to confidentiality obligations (or with the consent of the disclosing partner for Proprietary Information), not to use the Proprietary Information except for purposes contemplated by this MOU and use their reasonable efforts to prevent disclosure of proprietary information to third parties. These obligations of nondisclosure and nonuse do not apply to any Proprietary Information to the extent that a party can demonstrate by reliable written evidence
 - (i) was generally available to the public at the time of disclosure to the party;
 - (ii) was already in possession of the party at the time of the disclosure, other than pursuant to confidential disclosure agreement between the parties and not due to any unauthorized act by the party;
 - (iii) was developed by the party prior to the disclosure; or
 - (iv) the party is required by law to disclose, in which case the receiving party will notify the disclosing party and take all reasonable steps to further limit disclosure.
- 8.2 Each party agrees not to do or omit to do anything which might prejudice the filing of patent applications, including (but not limited to) using, publishing, disclosing or making available to the public anywhere in the world whether in writing or orally and whether in whole or in any part any invention and/or Proprietary Information.

ARTICLE 9: HUMAN SUBJECTS IN RESEARCH PROJECTS

Both parties assure that adequate safeguards shall be taken whenever using human subjects in research and an institutional review committee composed of members with varying backgrounds to assure complete and adequate review of projects involving the use of human subjects has reviewed and approved the projects. Informed consent, where appropriate, shall be obtained in accordance with international regulatory laws and authorities and guidelines on good research practices and ethics.

ARTICLE 10: INSURANCE

Both the South Eastern University College and CHULUNI HORTICULTURAL FARMERS PROJECT shall maintain errors and omissions insurance for its employees for its activities and participation in connection with the research and academic program.

ARTICLE 11: SERVICES

The South Eastern University College and CHULUNI HORTICULTURAL FARMERS PROJECT shall be at liberty to employ the services of consultants, managers, auditors, clerks, secretaries and such other staff as may be required and on such terms as to remuneration, tenure, or otherwise for the purposes of carrying into effect any or all of the objectives of the collaboration, provided such appointments shall comply with the policies and/or guidelines of the host institution.

ARTICLE 12: ADMINISTRATIVE COST LEVY

A 15% administrative cost shall be levied on all funds administered at the South Eastern University College for this project under this MOU. Funds awarded to employees of the South Eastern University College for any project shall in any event be required to be banked with the University and administered in compliance with South Eastern University College financial regulations. Parties shall be required to file the budget with the University.

ARTICLE 13: PREPARATION AND REVIEW OF RESEARCH PROPOSALS

In the implementation of the objectives of collaboration, the scientists shall prepare joint proposals for submission to the donor of each institution whose weighting and emphasis shall be mutually agreed upon.

ARTICLE 14: DISPUTES

In the event of any dispute arising between the parties in relation to this collaboration or touching on the meaning of this Memorandum of Understanding, or the rights and liabilities of the parties hereto, the parties agree that same shall be submitted to a decision of a single arbitrator, to be agreed upon by the parties; if the arbitration does not successfully resolve the dispute, the parties agree the matter shall be submitted for decision to two arbitrators

and an umpire, also to be agreed upon by the parties. This shall be a condition precedent to any action at law.

ARTICLE 15: FORCE MAJEURE

Either party shall promptly notify the other party, in writing, of any situation or event which may arise from circumstances beyond their control, which they could not have reasonably foreseen, and which make the performance of all or part of the parties' obligations under this contract impossible. Upon notification of the occurrence of such a situation or event, the performance of this contract shall be deemed to be postponed for a period of time equivalent to that caused by the Force Majeure and a reasonable period not exceeding one (1) week thereafter shall be allowed for re-mobilization to continue the performance of the contract.

ARTICLE 16: REVIEW AND AMENDMENTS

This Memorandum of Understanding may be reviewed and/or amended from time to time on mutual agreement as need may arise; and all such mutual agreements shall be incorporated by reference as ANNEXTURES to this Memorandum.

ARTICLE 17: DURATION OF THE MEMORANDUM

This Memorandum of Understanding shall be effective on the date of its signature by both parties and will be valid for a period of five years from that date, and may be renewed for a further period on terms to be agreed upon, in writing, by both parties.

ARTICLE 18: TERMINATION

The Memorandum may be terminated at any time by either party by giving the other party six (6) months notice, provided such termination shall be effective only after settlement of all liabilities and benefits and mutually accepted settlement of partially completed activities.

IN WITNESS WHEREOF, both parties have set their hands the day and year herein before mentioned.

SOUTH EASTERN UNIVERSITY COLLEGE CHULUNI HORTICULTURAL FARMERS PROJECT
UNIVERSITY NGO