

MEMORANDUM OF UNDERSTANDING

BETWEEN



KENYA PLANT HEALTH INSPECTORATE SERVICE

AND



CAB INTERNATIONAL

This **MEMORANDUM OF UNDERSTANDING** (Hereafter referred to as 'MOU') is entered into on this 16th day of MARCH, 2021 by and

Between

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS), a government regulatory agency established under the KEPHIS Act No. 54 of 2012, of the Laws of Kenya. Its Headquarters are located at Ololua Ridge, off Ngong Road with a registered address P.O. Box 49592-00100, Nairobi - Kenya (Hereinafter referred to as "KEPHIS" which expression shall include its successors and assigns) on the first part;

And

CAB International (CABI), a not-for-profit inter-governmental science-based development and information organization established in 1910 and registered with the United Nations under an international treaty, "the CABI Agreement". Its headquarters are at Norsworthy Way Wallingford, Oxfordshire, OX10 8DE, United Kingdom but acts through its Regional Office based in Nairobi at 673 Canary Bird, Muthaiga Limuru Road and address P.O Box 633-00621 Nairobi - Kenya (Hereinafter referred to as "CABI" which expression shall include its successors and assigns) on the second part.

WHEREAS KEPHIS and CABI have in principle agreed to enter into this MoU for purposes of establishing a close relationship of cooperation and partnerships to improve people's lives in Kenya by providing information and applying scientific expertise to solve problems in Agriculture and the Environment as further stipulated in this MoU;

NOW, THEREFORE, KEPHIS and CABI (hereinafter referred to as "the Parties") hereby agree as follows;

ARTICLE 1

Definitions

In this MoU where the context so permits the following terms and phrases have the meanings set out herein: -

"Business Day" means a day (except a Saturday or Sunday) when Institutions are normally open for ordinary business in Nairobi, Kenya;

"Confidential Information" means any information which is disclosed by either Party (hereinafter referred to as the "Disclosing Party") to the other Party (Hereinafter referred to as the "Receiving Party") pursuant to or in connection with this MoU (whether orally, encrypted, disseminated electronically, or in writing. Whether or not that information is communicated and/or furnished before the date of commencement of this MoU and whether or not such information is expressly stated to be confidential or marked as such);

"Effective Date" means the date - the MoU is duly signed by representatives of the last signing party;

"LoA" means the Letters of Agreement to be entered into by Parties relating to specific projects, pursuant to this MoU;

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"Parties" means KEPHIS and CABI together and the term **"Party"** means either of them as the context so permits and the terms **"Party"** and **"Parties"** mean their respective and joint successor(s), personal representative(s) and assignee(s) as the case may be;

"Term" means the term of this MoU as specified in clause 3 below;

ARTICLE 2

Objectives

- 2.1 The Parties Main Objective under this MoU is to establish a long-term relationship for purposes of exploiting their complementary research, institutional development and capacity building skills to further their respective missions (the "Main Objective"). The Parties will aim to find an appropriate framework which will facilitate cooperation in areas of mutual interest.
- 2.2 In furtherance of the Main Objective, each Party shall provide such staff support, institutional services and materials as may be necessary for the implementation and achievement of the Main Objective

ARTICLE 3

Areas of Cooperation

The Parties agree to cooperate on the following areas of mutual interest;

- a) Capacity building
- b) Developing and maintaining pathogen reference collection
- c) Diagnostics
- d) Food security and safety
- e) Knowledge management
- f) Management of Invasive Alien Species
- g) Policy development and review
- h) Protection of crops against endemic pest species
- i) Value chains, trade, market access and compliance

ARTICLE 4

Terms of Cooperation

- 4.1 The Parties shall, in order to enhance their cooperation, jointly undertake the following;
 - a) Partner and collaborate through strategic alliances and agreements aimed at mobilizing resources at the national, regional and global level for specific projects and program implementation.
 - b) Formulating joint agricultural research for development projects and/or programs. The projects research areas will focus on the emerging problems especially areas mention under Article 3.
 - c) Promoting uptake and use of research outputs
 - d) Jointly work together to respond/address shortfalls in the current legislations, regulations and policies of Kenya.
 - e) Knowledge management through development of products and tools using Information and Communications Technology (ICT), Training of Trainers on

- agricultural technologies and standards, agribusiness approaches for the most added value (export and food security) commodities in Kenya.
- f) Any area relevant to food and nutrition security, development, climate change, mitigation and adaptation strategies that may be of interest to either party.
- 4.2 The Parties will co-operate in the aforementioned areas and in other areas not listed above and/or in the framework of projects development and implementation.
- 4.3 If there will be costs involved, the parties shall through a LoAs as detailed in Article 6 agree on all modalities including funding of that particular activity/project.

ARTICLE 5

Modalities

- 5.1 The actions to be undertaken in the present MoU shall be the subject of SPECIFIC AGREEMENT that define, for all actions, the objectives, the duration, the means of implementation by the two Parties, the expected results, and the modalities of their execution.
- 5.2 The Parties agree that they shall collaborate with third Parties (if need be) in order to fulfil the joint actions stated here in.
- 5.3 The Parties shall jointly seek funding from donors through grant applications and any other applicable means so as to raise funds required to carry out the identified activities.

ARTICLE 6

Letters of Agreement

- 6.1 The Parties shall on a case-by-case basis negotiate and agree on the terms of each LoA without thereby being under any obligation to enter into any LoA except by mutual agreement.
- 6.2 The Parties shall select, develop, plan and jointly implement the specific activities through the LoAs. Each LoA shall specify;
- a) The name of the specific project to be undertaken;
 - b) The specific objectives, duration and procedures of the project;
 - c) The contributions and responsibilities of each party;
 - d) The amount and source of funding, including schedule of payment and reporting;
 - e) The intellectual assets and intellectual property ownership issues;
 - f) The special terms and conditions of performance of the LoAs;
 - g) The rights and obligations of each Party; and
 - h) Any other provisions as may be relevant and/or applicable.
- 3.3 Each LoA shall be expressed in English and shall only be effective and binding on the Parties if signed by the duly authorized officers of the Parties.

ARTICLE 7

Records

Each Party shall be responsible for maintaining its own records of the activities untaken pursuant to this MoU.

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ARTICLE 8

No Exclusivity

The MoU does not obligate either Party to work exclusively with the other on any project whatsoever or constitute either Party an agent of the other. However, once an LoA has been executed by the Parties, neither of the Parties shall undertake the same project in collaboration with any other person unless agreed otherwise in the LoA.

ARTICLE 9

Independence of Parties

- 9.1 Nothing contained in this MoU shall constitute either Party a partner or agent of the other for any purposes whatsoever.
- 9.2 Neither Party has the authority, either expressed or implied, to enter into any agreement, incur any obligations on behalf of, or commit the other Party in any manner whatsoever, except as is provided in this MoU or as may be agreed in writing from time to time.

ARTICLE 10

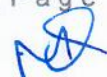
Joint Technical Coordination Committee

- 10.1 The two institutions shall appoint a Joint Technical Coordination Committee for each specific project as agreed in the LoA.
- 10.2 The Committee will meet at least two times in a year and its functions will be to;
 - a) Coordinate the activities of the Parties for joint project identification, evaluation, implementation, monitoring and evaluation of both proposed and on-going projects.
 - b) Advise the respective Parties' Chief Executives of the need to review, renew, revise, terminate the LoA or enter such other agreements as shall be in pursuance of the objectives of this MoU.
 - c) Approve joint proposals for donor funding in their areas and each project shall have a Principle Investigator mutually agreed upon by the two Parties.
 - d) Propose policy options, implementing strategies and evaluating procedures.
 - e) Prepare programs and specific projects for joint implementation.
 - f) Seek to understand the various technological developments and information exchange in their areas of specialization.

ARTICLE 11

Authorized Representatives

- 11. Any action required or permitted to be taken and document required or permitted to be executed under this MoU may be taken or executed.
 - a) By or on behalf of KEPHIS by the Managing Director or any other appointed Officer.
 - b) By or on behalf of CAB International, the Regional Director or any other appointed Officer.



ARTICLE 12

Sharing of Equipment and Physical Facilities

- 12.1 The Parties will permit researchers carrying out activities for technological development to use the existing facilities PROVIDED and is hereby mutually agreed by the Parties that the use of the facilities will not operate as a right to pass title thereof to either Party or any other person using the facilities NOTWITHSTANDING the Parties or any such other person may be required to meet the cost of maintenance of the facilities.
- 12.2 The Parties will permit the use of the appropriate premises and facilities as a research, training or outreach site upon such terms and for such duration as shall mutually be agreed upon.
- 12.3 Any equipment jointly acquired in the course of the collaboration shall remain in the custody of the host institution upon the expiry of that particular project, and shall not be disposed of without the mutual agreement of both Parties.
- 12.4 The Parties further undertake for themselves, their agents and/or servants to observe all rules and regulations and if need be, make further rules governing the use of their respective facilities including laboratories and workshops where such facilities are used to conduct any of the functions of this collaboration.

ARTICLE 13

Transfer of Germplasm and other Technologies

- 13.1 The Parties shall jointly own germplasm and other technologies generated in the course of collaboration PROVIDED that such germplasm is not a derivative of previous work.
- 13.2 Germplasm or any other plant material or technologies transferred to either Party by the other shall be used for the intended purpose and shall not be passed on to a third Party without prior written authority of the originating institution and such transfer shall only take place after execution of the appropriate Material Transfer Agreement.
- 13.3 The Parties hereto shall be at liberty to employ the services of consultants or 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 the objects of the collaboration upon mutual consultation and agreement.

ARTICLE 14

Indemnity

The Parties shall indemnify, defend, release and hold harmless each other's officers' directors, employees, and agents from and against any loss, liability, damage, or expense (including reasonable advocates' fees and costs) from any claim that may arise from or in connection with the performance of the objectives outlined in the MoU.

ARTICLE 15

Relationship between Parties

- 15.1 Nothing contained herein shall be construed as establishing a relationship of agent and principal or master and servant between the Parties.

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- 15.2 Each Party shall have full control of its operations and undertaking and shall have full responsibility for the activities and duties carried out by and on its behalf.
- 15.3 Nothing contained in this MoU shall be construed as exempting Parties from the Laws, Rules and Regulations within which and from which they operate and which legal instruments are binding upon them.

ARTICLE 16

Insurance

In carrying out the functions of this MoU, each party will insure its own employees and property, and ensure that all adequate safety precautions are in place.

ARTICLE 17

Exchange of Staff

- 17.1 Through this MoU, the two Parties may offer short-term exchange of research staff. The institution will share personal knowledge as and when required and, on such terms, as shall be mutually agreed for the purposes of research and post-research follow ups.
- 17.2 For this purpose, the Parties shall upon their approval and mutual agreement recommend particular scientists for attachment for short-term periods of time under this MoU.
- 17.3 The staff employer Party shall continue to pay full salary and other allowances while the host party, shall provide technical logistical assistance, per diem expenses and other payments as shall be expressly agreed.

ARTICLE 18

Confidentiality

- 18.1 Both Parties acknowledge that during the course of implementation of this MoU, either Party may acquire Confidential Information of the other. The Parties shall consider all documents, information, and data as confidential if it is so marked, regardless of the format in which it was given. Confidential Information shall include unregistered inventions, unregistered utility models, unregistered industrial designs, unregistered new seed or plant varieties, computer software, research results, trade secrets, any intellectual property assets, background intellectual property, foreground intellectual property, business information, financial records, know-how, new unregistered processes, drawings, copyrights and related rights, analysis, interpretations, reports, and any other information which is not in the public domain.
- 18.2 Each Party agrees to take all appropriate measures to keep all such confidential Information in a secure place, and further agree not to publish, communicate, divulge, use or disclose, directly or indirectly, for its own benefit or for the benefit of another, either during the course of implementing or after performance of this MoU to any third Party without the written consent of the other Party.
- 18.3 The Recipient shall protect the Confidential Information of the Disclosing Party against improper use or disclosure with at least the same degree of care as

they would for their own confidential or proprietary information, but in no event use less than reasonable care.

- 18.4 Notwithstanding the foregoing, the Receiving Party shall be entitled to release Confidential Information to permit it to prosecute or defend any claim under this MoU or pursuant to an order of a court or government agency; provided, however, in case of such permitted release, the Receiving Party shall limit the release to the greatest extent reasonably possible under the circumstances and shall have provided the Disclosing Party with sufficient advance notice to permit the Disclosing Party to seek a protective order or other order protecting its Confidential Information from disclosure. This obligation shall remain in force for a further period of three years after the termination or expiry of this Agreement.
- 18.5 This obligation of confidentiality is not applicable where information falls into the public domain, or information that has been previously known by the Parties before the date of signing the present MoU, or information that has been obtained by a third Party through a Court Order.

ARTICLE 19

Intellectual Property/Global Access

- 19.1 The Parties recognize the importance of Intellectual Property as a component of the agricultural research agenda.
- 19.2 Prior to any disclosure of proprietary information by one Party to the other concerning specific aspects of this collaboration, one Party may require the other to execute a confidentiality agreement in respect of the information.
- 19.3 For the avoidance of doubt, all Background Intellectual Property used in connection with the Project shall remain the property of the Party introducing the same. No Party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background Intellectual Property of the other party
- 19.4 The Parties jointly own all rights, title and interest in the data and works they create under the MoU

ARTICLE 20

Publication

- 20.1 Materials for publication or presentation arising from the joint research projects shall be submitted for clearance to the two institutions to ensure that no patentable discoveries are published prior to protection by patents.
- 20.2 Any scientific publications resulting from the joint collaborative research projects, including scientific papers, books and proceedings of conferences, seminars and workshops will be authored jointly to reflect where relevant contributions have been made and quoting the names of authors and the two institutions as well as the donor agencies if applicable.

ARTICLE 21

Financial Implication of the MoU

- 21.1 It is understood that neither Party assumes any financial obligations as a result of this MoU but financial arrangements shall be negotiated separately and shall depend upon the availability of funds.
- 21.2 The Parties hereto undertake to solicit for funds including donor funds, research grants, contributions, subscriptions and such funds for the purposes of realising any or all the objects of the collaboration.
- 21.3 The two Parties further agree to bear the cost of administering the MoU in an equal ratio or as shall be mutually agreed from time to time.

ARTICLE 22

Amendments

Changes or modifications of the terms or scope of this MoU shall be made from time to time as need arises or as amendments are formally requested by the respective Chief Executive Officers of either Party. The amendments shall be made in writing and signed by the Parties and shall become Annexes to this MoU.

ARTICLE 23

Termination

- 23.1 Either Party may terminate the MoU by giving a sixty days (60) written notice of the intent to terminate the MoU to the other Party. Such termination shall not affect the execution and conclusion of specific activities being carried out under specific LoAs entered into pursuant to this MoU that are still in progress.
- 23.2 In so far as possible, such notice will be given three months in advance of the desired termination date.
- 23.3 In the event of such termination, joint collaborative activities shall be dealt with as shall be mutually agreed upon by the two institutions.

ARTICLE 24

Settlement of disputes

- 24.1 The Parties shall use their best efforts to settle any disputes arising out in the interpretation or application of this MoU or in any way connected with this MoU.
- 24.2 If any dispute, claims or other matters shall arise whether during the continuance of this MoU, or upon or after its determination between the Parties hereto touching or concerning this MoU, or as to any other matter in any way connected with or arising out of or in relation to the subject matter of this MoU, and such dispute is not mutually settled between the Parties within THIRTY (30) DAYS after receipt by one Party of the other Party's request for such amicable settlement, the dispute shall be referred to Arbitration by a single Arbitrator to be appointed by Agreement between the two Parties. In default of the Parties mutually agreeing on an Arbitrator within FOURTEEN (14) DAYS of notification of a dispute, either Party may apply to the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators who shall appoint an Arbitrator.



- 24.3 The arbitration proceedings shall be conducted in Nairobi, Kenya and shall be conducted in accordance with the provisions of the Arbitration Act (No. 4 of 1995, Laws of Kenya) or any statutory modification or re-enactment thereof for the time being in force.
- 24.4 This clause will however, not prevent any Party from seeking interim relief from a Court of Competent Jurisdiction pending the decision of the Arbitrator referred to herein.

ARTICLE 25

Conflict of Interest

The representative of either Party shall not accept for their own benefit any payment or discount in connection with the activities related to this MoU.

ARTICLE 26

Communication/Logo

- 26.1 Each Party shall communicate in a positive way on each other.
- 26.2 The Logo of either Party can be used positively as an associated organization on the usual matters. In case of uncertainty of the association of the name of the organisation, prior consultation shall be made to defend the position, rights and reputation of the organization.

ARTICLE 27

Legal Effect

Whereas the Parties intend to be legally bound by the MoU and respective LoAs that may be agreed upon, this is entered into in good faith and solely as a basis for entering into contractually binding relationships through the LoAs. Accordingly, this MoU is not intended by the Parties to be legally binding upon them and failure to enter into any LoA shall not constitute any breach capable of raising any legal liability on the part of either Party.

ARTICLE 28

Force Majeure

Neither party shall be liable in damages or have the right to terminate this MoU for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any operational or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 29

Notices

Any notification, request or consent required or permitted to be given or made pursuant to this MoU shall be in writing in the English language and signed by or on behalf of the Party giving it. Any such notification, request or consent shall be deemed to have

been given or made when it is either delivered in person to the authorized representative at the Head Office of the Party to whom the communication is addressed, or when sent by a registered mail, fax, or Email with signed attachments to such Party at the following addresses;

For: **KEPHIS**
The Managing Director
Ololua Ridge,
Off Ngong Road,
P. O. Box: 49592-00100,
Nairobi, Kenya
Telephone: +254 20 661 8000
Email: director@kephis.org

For: **CABI**
The Regional Director,
673 Canary Bird,
Limuru Road, Muthaiga,
PO Box 633-00621,
Nairobi, Kenya
Telephone: +254 20 2271000/20
Fax: +254 20 7122150
Email: africa@cabi.org

ARTICLE 30

Address for Service of Legal Documents

The Parties agree that the address for service of legal documents shall be the same address set out in Article 29 above

ARTICLE 31

Change of Address

A Party may change its address for the purpose of this Clause, by notice in writing to the other Party, which change of address must include a physical address and must be acknowledged as received by the other Party in writing in order to be effective.

ARTICLE 32

Applicable Law

This MoU shall be read and construed in accordance with the Laws of the Republic of Kenya.

ARTICLE 33

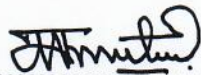
Effective date

- 32.1 The present MoU shall become effective upon signature by the duly authorized representatives of the last signing Party.
- 32.2 The MoU will remain in force for (five) 5 years (the "**Term**"), subject to renewal for similar periods unless earlier terminated in accordance with the provisions of Article 23 above.
- 32.3 It shall be printed in **FOUR (04) ORIGINAL COPIES**.



IN WITNESS, WHEREOF, the Parties, each acting through its duly authorized representatives, have signed, below, the present Memorandum of Understanding.

SIGNED for: **Kenya Plant Health Inspectorate Service (KEPHIS)**



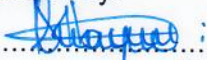
Prof. Theophilus M. Mutui (PhD)

Managing Director, KEPHIS

Date: 16/03/2021



Witnessed by:



Name: My. Waithera Mbaru

Position: As. Corporation Secretary & Head of Legal Affairs

SIGNED for: **CAB International (CABI)**



Dr. Morris Akiri (PhD)

Regional Director, CABI

Date: 19/03/2021



Witnessed by:



Name: DR DANIEL KARANJA

Position: DEPUTY DIRECTOR, DEVELOPMENT

APPEND SIGNATURE TO ALL THE PAGES OF THE MOU