



MEMORANDUM OF UNDERSTANDING

BETWEEN

KIBABII UNIVERSITY (KIBU)

AND

**KENYA UNION OF POST- PRIMARY
EDUCATION TEACHERS (KUPPET)**

NOVEMBER, 2017

PREAMBLE

This Memorandum of Understanding (MoU) is made This _____ day of _____ 2017 Between KIBABII UNIVERSITY which is a Public University in Bungoma County established by Law and governed by the Universities Act 2012 and Kibabii University Charter whose address shall be P.O BOX 1699-50200, Bungoma, within the Republic of Kenya (hereinafter referred to as “KIBU” which expression shall where the context so admit include its successors and assignees) of the first part.

AND

KENYA UNION OF POST –PRIMARY EDUCATION TEACHERS hereinafter referred to as KUPPET established as a Trade Union within the Republic of Kenya in 1998 of P.O BOX 30412-00100 NAIROBI, KENYA on the second part.

WHEREAS

Both parties have agreed to enter into a Memorandum of Understanding for the furtherance of their objectives and mutual benefit derived from scholarly interaction and other forms of academic and development collaboration.

KIBU has agreed to grant KUPPET a discount on KIBU fees as detailed in article 6.2.

Now the Parties hereby agree as follows:-

ARTICLE 1: DEFINITION AND INTERPRETATIONS

1.1 In this MoU, the following words and expressions are used in the following senses unless a contrary intention appears in the context.

- (a) ‘MoU’ means this Collaboration together with its schedules and any such modifications, variations, amendments or additions, as the parties to this MoU may agree in writing from time to time.
- (b) ‘Secretary General’ means the designated officer of KUPPET that is elected by the ANNUAL DELEGATES CONFERENCE OF KUPPET. This officer shall on behalf of KUPPET be authorized to make and/or amend and/or to agree to any of the regulations or requirements pertaining to the conduct of the MoU provided that prior written consent is obtained from KIBU.
- (c) ‘The Senate’ means the university senate created under KIBU’s Statutes.
- (d) ‘Trademark’ means KIBU’s Logo, KUPPET’s Logo and their respective names and any other distinctive design that is associated and duly registered as a trademark under the trademark Act.
- (e) ‘Tuition Fees’ means the fees being charged by KIBU for teaching and learning.
- (f) ‘A legal dependant’ means a biological child of a KUPPET member or a legally adopted child by a KUPPET member through a court order.

1.2 Headings to the Clauses of this MoU are inserted for convenience only and shall not affect the construction or interpretation of this MoU.

1.3 In this MoU, unless the context otherwise requires, words denoting the singular member includes the plural and vice versa; words denoting a gender includes every gender and words denoting natural persons include body corporate.

ARTICLE 2: DURATION

2.1 The initial period of this MoU notwithstanding the actual date of its execution, shall be for a period of **Five (5) years** (hereinafter referred to as the 'MoU Period') and that a review shall be conducted at the end of the MoU Period. Any extension of another five (5) years period shall be effected in writing upon the mutual agreement of both parties.

2.2 The commencement of the objectives of the MoU shall be immediately upon the signing of MoU (hereinafter referred to as the 'Commencement date').

ARTICLE 3: RIGHTS GRANTED

3.1 Subject to and in accordance with terms here KUPPET shall have:-

- (a) The right to recruit students to the programmes, of which KIBU has authorized it to do using guidelines as shall be provided by KIBU;
- (b) The right to use Trade Mark and other Symbols, insignia, distinctive designs and plans or specifications owned or authorized to be used by KIBU and KUPPET shall be authorized in writing by respective parties.
- (c) All other rights and benefits accruing to KUPPET by virtue of this MoU, in so far as it will not infringe on the rights of KIBU.

3.2 Notwithstanding, the rights granted to KUPPET shall not be entitled or permitted to use the Trade Mark for purposes other than those relating to the conduct/management, marketing and promotion of the programmes and/or part of a written content in KUPPET prospectus and/or promotional materials without obtaining KIBU's prior written approval.

3.3 KUPPET shall not hold itself out as being the Agent or Partner of KIBU, or as being entitled to pledge the credit of KIBU, and shall identify itself as KUPPET only, in all dealings with third parties.

ARTICLE 4: KUPPET’S OBLIGATIONS

4.1 KUPPET acknowledges and agrees to recruit from among her members under this MoU, for admission into KIBU programmes.

4.2 KUPPET will endeavor to support KIBU in furtherance of professional practicum programmes through availing such opportunities to KIBU students in their member schools in the country.

ARTICLE 5: KIBU OBLIGATIONS

In order to assist KUPPET to disseminate information about the tuition discount of the programmes, KIBU shall provide and/or make available to KUPPET the following:-

5.1 The continual up–date of any alterations and/or improvements in/or to the Programmes to enable KUPPET members have access to quality education. In the event of any dispute, the authentic text of the MoU shall be the copy kept by the Vice Chancellor and Secretary General of KUPPET.

5.2 At KUPPET’S written request, to give advice or know–how and guidance in such areas as to the management and promotion of the Programmes and any equipment to be employed in connection therewith.

5.3 At KUPPET’s written request, to provide any other support in the implementation of offering the discount Programmes at KIBU.

ARTICLE 6: FINANCIAL AND ADMINISTRATION OBLIGATIONS

6.1 KUPPET undertakes to market KIBU to her members, as provided herein.

6.2 KIBU (in all KIBU Campuses) will offer Certificate, Diploma, Undergraduate, Masters and Doctoral degree programmes at a discount of fifteen percent (**15%**) of tuition fee only to members of the KUPPET and their legal dependants.

6.3 KUPPET members enrolled in KIBU programmes will benefit on commencement of this MoU.

6.4 The discount on tuition fees is only applicable to self-sponsored students.

6.5 Students already benefiting through other discounted programmes shall select **only one** of the two.

6.6 Neither party shall assume financial obligation of the other without written consent of the other.

6.7 KUPPET to enroll at least 200 students per academic year.

6.8 KUPPET members will continue to enjoy the discount Programmes facility irrespective of the number of enrolled students.

ARTICLE 7: ADMINISTRATION OF THE DISCOUNTED PROGRAMMES

7.1 The Vice Chancellor or such other person as shall be designated by KIBU, shall be:

- (a) The sole authority on the general administration of this MoU.
- (b) KUPPET shall direct all communications relating to the conduct and management of the discount programmes to the office of the Vice Chancellor and only the Vice Chancellor
- (c) Shall have the authority both ostensible and apparent to instruct and/or direct in written form, KUPPET in all matters pertaining to the discount programmes.

7.2 For the smooth administration of the MoU, 10 members (five from each party), shall constitute the Joint Steering Committee.

7.3 Each institution shall have a team leader appointed by the Head of that institution.

7.4 The steering committee shall meet regularly as need arises.

ARTICLE 8: RIGHT OF REVIEW OF THE MOU

Notwithstanding anything mentioned in this MoU, either Party to this MoU shall have the right to review the terms and conditions of this MoU, after having obtained consultation and written consent of the other Party. Any such amendments or variations shall be made in writing, and signed by both parties.

ARTICLE 9: TERMINATION

9.1 Either party may terminate this MoU after giving a written notice of One Academic Year.

9.2 Any decision to terminate this MoU shall however, be subject to the completion of the existing or agreed commitments, to existing or accepted students.

9.3 Any new student admitted/enrolled after the issuance of termination notice, shall not be entitled to the discount offer.

9.4 In the case of default, neglect or failure affecting the quality of the delivery of the discounted programmes provided to the students, both KIBU and KUPPET shall have the right to terminate the MoU if both parties fail to remedy such neglect.

ARTICLE 10: FORCE MAJEURE

In the event of force majeure neither party shall be considered to be liable of any resulting breach, but in such an event either party shall after a period of two (2) months from the date of the occurrence of the force majeure be entitled to choose either:-

- 10.1 To suspend the operation of this MoU upon one(1) month's written notice for a specific period until such suitable time or date whereby parties may agree to recommence the operation of this MoU; or

- 10.1 To alternatively work out a positive solution for the students who are already enrolled in the discounted programmes.

ARTICLE 11: CONFIDENTIALITY

- 11.1 Either Party may from time to time disclose to each other certain Confidential Information relating to the MoU solely to permit the Parties to perform their obligation under this MoU.
- 11.2 It is hereby agreed that Neither Party shall furnish to third party such Confidential Information, which include but not limited to the operation, publicity, profits, financial affairs, present or future plans or policies of either Party or any other information relating to the operation of 'Either Establishment' without the consent of the other party.

11.3 Maintenance of Confidential Information

- (a) The Parties agree to keep confidential all confidential information disclosed to them by the other in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own.
- (b) Notwithstanding the above, neither KIBU nor KUPPET shall have any such obligation with respect to the disclosure to other not parties to this MoU of such confidential information as can be established that:-
- (i) it has been known publicly,
 - (ii) has been known generally in the industry before communication by the disclosing party to the recipient,
 - (iii) it has become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party.
 - (iv) it has been known otherwise by the recipient before communication by the disclosing party; or
 - (v) it has been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully possession of such information.

ARTICLE 12: INTELLECTUAL PROPERTY

KUPPET herein acknowledge that, all course planners and Course Operation Manuals provided by KIBU in aiding the delivery of its Discounted Approved Programmes is the sole property of KIBU, any unauthorized use of material in any form or manner whatsoever shall be a breach of trust and in contravention of the Copyright Act 1987 or any other relevant statutes or law of Intellectual Property and may result in civil and/or criminal proceedings. This clause shall survive notwithstanding the expiry or termination of this MoU.

ARTICLE 13: EXCLUSION OF LIABILITY

KIBU, its agents and/or its' servants shall not be held liable to any person/student enrolled in the Approved Discounted Programmes for any losses, damages, negligence or the inability of KUPPET to discharge and/or perform its legal and/or contractual obligations under this MoU.

ARTICLE 14: INDEMNITY

It is hereby agreed that KUPPET in marketing the discounted programmes, shall indemnify KIBU, its agents and/or its servants, for all actions, claims, proceedings, costs, losses and damages which may be brought or established against KIBU by any student or any other person whatsoever which are attributable, whether directly or indirectly, to the negligent act, omission or commission by KUPPET, its officers, servants or agents.

ARTICLE 15: NOTICE

15.1 Unless otherwise specifically provided, any notice, demand or consent required or permitted in accordance with this MoU shall be in writing and signed by an authorized person of the Parties and shall be delivered either personally or sent by registered post to:-

a) The respective parties' address as stated:

**THE VICE CHANCELLOR
KIBABII UNIVERSITY
P.O BOX 1699-50200
BUNGOMA
Email: enquiries@kibu.ac.ke**

**SECRETARY GENERAL KUPPET
P.O BOX 30412-00100
NAIROBI KENYA
Email:kuppet.kenya@gmail.com**

b) Any such other address, that either party may notify the other in writing provided always that either party shall be deemed to have been notified of such change of address only if the other party had actually received the notification.

15.2 Such notices demand or consent shall be regarded as being served by the sender and received by the intended recipient, if:

- (a) By personal delivery, when acknowledged receipt by the intended recipient
- (b) By post, twenty one (21) business days from and after delivery to the postal authorities by the party serving notice including the date of posting, OR any other method of service that is provided for by the law stated herein.

ARTICLE 16: WAIVER

Any forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this MoU shall not prejudice or affect the rights and remedies of either party hereunder, nor shall any waiver or variation of any of the terms and conditions of this MoU be valid or have any effect unless the same be made in writing and signed by both parties hereto.

ARTICLE 17: NON – ASSSIGNMENT

KUPPET shall not, under any circumstance whatsoever arrange for another person or body corporate and or firm to perform any part of its obligations or to discharge all or any part thereof without the prior written consent of KIBU.

ARTICLE 18: SEVERABILITY

Should any term, part or provision of this MoU be declared by any court to be in conflict with the Law and therefore unenforceable, the validity and enforceability of the remainder of the MoU shall not be affected thereby. In such event the offending term, part or provision shall be deemed not be part of this MoU and any resulting necessary consequential amendment shall be deemed to be incorporated in this MoU

ARTICLE 19: ARBITRATION

Any disputes between KUPPET and KIBU, other than disputes which KIBU considers affect the reputation and goodwill of the MoU shall be referred to an Arbitrator appointed and agreed upon by both parties in accordance to the Arbitration Laws of Kenya.

ARTICLE 20: LANGUAGE

All notices given under this MoU shall be in English and if there is any discrepancy between any document and other version of the same, the original version shall be the definitive and authoritative one.

RTICLE 21: ENTIRE MOU

This MoU, constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and MoUs between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties is entering into this MoU on the basis of any representations or promises not expressly contained herein.