

PROJECT AGREEMENT

ON

**CONTRIBUTION ON CONSERVATION AND ECONOMIC DEVELOPMENT IN CHURIA REGION THROUGH
ADVANCE BAMBOO TECHNOLOGY**

Between

President Chure-Tarai Madhesh Conservation Development Board

and

Kathmandu University

May 25, 2015

Project Agreement

This agreement (hereinafter called the "agreement") is made on the 25th day of May, 2072 between, on the one hand, **President Chure Tarai Madhesh Conservation Development Board (PCTMCDB)**, (herein referred to as Chure Board") and, on the other hand, **Kathmandu University** (herein referred to as KU).

WHEREAS

- (a) MOU has been done between Chure Board and KU to provide cooperation in research and development services and this agreement is to bring into operational stage based on general agreements of both parties,
- (b) the KU, professional experts members having represented have the required professional skills, have agreed to provide the Services on the terms and conditions set forth in this agreement.

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Agreement:

- (a) The General Conditions
- (b) The Special Conditions

Appendix A: Proposal submitted by the university including description of the services, output, human resources involved.

Appendix B: Minutes of Negotiation Meetings

2. The mutual rights and obligations of the Chure Board and the KU shall be as set forth in the Agreement, in particular:

- (a) The KU shall carry out the Services in accordance with the provisions of the proposal accepted by the Chure board and KU. and
- (b) The Chure Board shall make payments to the KU in accordance with the provisions of the Agreement.

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



Bharat Prasad Pudsaini

For and on behalf of the Chure Board

Mr. Bharat Prasad Pudsaini

(Member Secretary)

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For and on behalf of the KU

Prof. Dr. Moham Bikram Gewali

(Dean, School of Sciences)

I. General Conditions

1.1 General Provisions

- a. "Applicable Law" means the laws and any other instruments having the force of law in Nepal, as they may be issued and in force from time to time;
- b. "Government" means Government of Nepal.
- c. "Agreement" means the agreement signed by the Chure Board and KU
- d. "Effective Date" means the date on which this Agreement comes into force
- e. "GC" means these General Condition;
- f. "Local Currency" means the currency of the Government;
- g. "Member," in case the KU consist of a joint venture of more than one entity, means any of these entities; and "Members" means all these entities;
- h. "Personnel" means persons involved in the the cooperative research from KU Schools and departments (as mentioned in the proposal).
- i. "SC" means the Special Conditions by which the GC may be amended or supplemented;
- j. "Services" means the work to be performed by the KU and its responsible Schools and Departments pursuant to this Agreement,;

1.2 Relation between the Parties

The relation between Chure Board and the Kathmandu University's Schools and Departments will have full responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Agreement

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law of Nepal.

1.4 Language

This Agreement has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Agreement.

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Agreement.

1.6 Notices

- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 1.6.2 Notice will be deemed to be effective as specified in the SC.
- 1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change.

1.7 Services

The Services shall be performed as mentioned in the proposal as the Chure Board have approved.

1.8 Authority of Member in Charge

In case of KU, Vice Chancellor, Respective Dean and Head of the Departments, including all project team will be responsible to pursue the task and to act rights and obligations towards the Chure Board. The Dean office will request for the payments from the Chure Board.

1.9 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Chure Board or the KU Schools and Departments may be taken or executed by the concerned officials.

1.10 Taxes and Duties

Unless otherwise under the prevailing applicable law the KU Schools and Department Personnel shall pay such taxes, duties, fees and other impositions.

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date (the "Effective Date") after signing the Agreement.

2.2 Termination of Agreement for Failure to Become Effective

Initially the Agreement will be for five years period (May 2015, May- April 2019) without any budget increment. In case of justification, the budget can be provided by mutual understanding. The Agreement period can be extended in case of requirement, as agreed by the two parties.

2.3 Commencement of Services

The KU and its concerned Schools and Departments shall begin carrying out the Services at the end of such time period after the Effective Date of Agreement.

2.4 Expiration of Agreement

Unless terminated earlier this Agreement shall terminate at the end of five years period after the Effective Date of Agreement (May, 2015 to April, 2019)).

2.5 Variation

Variation of the terms and conditions of this Agreement, including any variation of the scope of the Services, may only be made by written agreement between the Parties however, each Party shall give due consideration to any proposals for variation made by the other Party.

2.6 Force Measure

2.6.1 Definition

- a. For the purposes of this Agreement, "Force Measure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Measure to prevent), confiscation or any other action by government agencies.
- b. Force Measure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.6.2 No Breach of Agreement

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Measure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.6.3 Measures to be taken

- a. A Party affected by an event of Force Measure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay.
- b. A Party affected by an event of Force Measure shall notify the other Party of such event as soon as possible, and in any event not later than fifteen (15) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Measure.

2.6.4 Extension of Time (EoT)

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Measure or Chure Board failure to provide facilities in time as per the Agreement. The KU and its schools or Departments shall submit an application to the Chure Board for extension of time, stating the causes for delay with supporting evidence within 7 days before the expiry of the Agreement completion date. The approval of EoT shall be subject to verification by the Chure Board whether:

- a. the KU/ Schools/Departments had made the best possible efforts to complete the work in due time,
- b. the facilities to be provided by the Chure Board as per the Agreement to the KU Schools/Departments was made in time or not,
- c. the delay was as a result of Force Measure or not.

2.6.5 Consultation

Not later than thirty (30) days after the Consultants, as the result of an event of Force Measure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.7 Suspension

The Chure Board may, by written notice of suspension to the KU/ Schools/ Departments, suspend all payments to the KU/ Schools/ Departments hereunder if the KU/ Schools/ Departments fail to perform any of their obligations under this Agreement, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the KU/ Schools/ Departments to remedy such failure within a period not exceeding thirty (30) days after receipt by the KU/ Schools/ Departments of such notice of suspension.

2.8 Termination

2.8.1 By the Chure Board

The Chure Board may, by not less than thirty (30) days' written notice of termination to the KU/ Schools/ Departments, after the occurrence of any of the events specified below,

- a. if the KU/ Schools/ Departments fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Chure Board may have subsequently approved in writing;

- b. if the KU/ Schools/ Departments submit false documents to the Chure Board.
- c. If the Chure Board, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.
- d. if the KU/ Schools/ Departments, in the judgment of the Chure Board, has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement. For the purpose of this clause:

"Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public interest.

"fraudulent practice" means a misrepresentation of facts in order to influence a result and objectives

2.8.2 By the KU/ Schools/ Departments

The KU/ Schools/ Departments may, by not less than thirty (30) days' written notice to the Chure Board, such notice to be given after the occurrence of any of the events below.

- a. if the Chure Board fails to pay any money due to the KU/ Departments pursuant to this Agreement within forty-five (45) days after receiving written notice from the KU/ Schools/ Departments that such payment is overdue;
- b. if the Chure Board is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days.
- c. if, as the result of Force Measure, the KU/ Schools/ Departments are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

2.8.3 Cessation of Rights and Obligations

Upon termination of this Agreement, all rights and obligations of the Parties hereunder shall cease.

2.8.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other, the KU/ Schools/ Departments shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

2.8.5 Payment upon Termination

Upon termination of this, the Chure Board shall make the following payments to the KU/ Schools/ Departments:

- a. remuneration for Services satisfactorily performed prior to the effective date of termination;
- b. reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and
- c. except in the case of termination, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Agreement including the cost of the return travel of the Personnel and their eligible dependents.

2.8.6 Settlements of disputes

If either Party disputes, shall adopt following steps,

First step: Dialogue between Project Manager (On behalf of KU) and Research Section team (On behalf of Chure Board)

Second step: Dialogue between Respective Dean (On behalf of KU) and Member Secretary (On behalf of Chure Board)

Third step: Dialogue between Vice chancellor (On behalf of KU) and Chairman (On behalf of Chure Board).

3. Obligations of the KU and its Schools and Departments

3.1 General

3.1.1 Standard of Performance

The KU and its concerned Schools and Departments shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. KU/ Schools/ Departments shall always act, in respect of any matter relating to this Agreement.

3.1.2 Law Governing Services

The KU/ Schools/ Departments shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure targeted results. In general, the professional proposed Personnel/s experts to carry out the task should not be changed. In case of necessity prior information and consensus with Chure Board can be changed.

3.1.3 Application of Procurement Law

KU/ Schools/ Departments, have the responsibility on the procurement of goods, works or services, and shall comply with any applicable procurement guidelines as per the prevailing Public Procurement Act of the GoN or in accordance with the University financial regulations. The procurement responsibility shall be for the account of the KU/ Schools/ Departments.

3.2 Conflict of Interests

3.2.1 KU and its Schools/ Departments Not to Benefit from Commissions, Discounts, etc.

The remuneration of the KU and its concerned Schools and Departments shall not accept for their own benefit from any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of their obligations. The KU/ Schools/ Departments shall use their best efforts to ensure that any Personnel and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 KU and its Schools and Departments and Affiliates Not to Engage in Certain Activities

The KU/ Schools/Departments agree that, during the term of this Agreement and after its termination, the Consultants and any entity affiliated with the Consultants, as well as any Subconsultant and any entity affiliated with such Sub consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

The KU/ Schools/ Departments shall not engage, and shall cause their Personnel as well as their Sub consultants and their Personnel not to engage, either directly or indirectly, in any of the following activities:

- a. during the term of this Agreement, any business or professional activities in Nepal which would conflict with the activities assigned to them under this Agreement; and
- b. After the termination of this Agreement, such other activities which can hamper the target of Chure Board.

3.3 Confidentiality

The KU and its Schools and Departments, and the Personnel of either of them shall not, either during the term of within two (2) years after the expiration of this Agreement, disclose any proprietary of confidential information relating to the Project, the Services, this Agreement, or the Chure Board's business or operations without the prior written consent of the Chure Board.

3.4 Liability of the KU and its concerned Departments

Subject to additional provisions, the KU and its concerned Schools and Departments' liability under this Agreement shall be as provided by the Applicable Law.

3.5 Insurance to be Taken out by the KU and its concerned Departments

The KU and its concerned Schools and Departments shall take out and maintain case of own insurance either by own expenses or fund received by the Chure Board.

3.6 Accounting, Inspection and Auditing

The KU (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases, and (ii) Submit to the Audit report to the Chure Board after completion of the work, iii) The KU will refund the unspent budget to the Chure Board at the end of Agreement.

3.7 KU/Schools/ Departments s' Actions Requiring Chure Board's Prior Approval

The KU shall obtain the Chure Board's prior approval in writing before taking any of the following actions:

- a. appointing other members, which was mentioned in the proposal to carry out the services.
- b. entering into a sub Agreement for the performance of any part of the Services,
- c. Any other actions that may be serious to carry out the services.

3.8 Reporting Obligations

The KU and its concerned Schools and Departments shall submit to the Chure Board the reports and documents within seven days of the end of trimester. In case of significant results reporting can be done at any time.

Any information generated from the project should be reported to the Chure Board by KU. KU shall submit annual progress report within 15 (Fifteen) days of the completion of the fiscal year and the Project completion report within four months of the close of the project. An independent evaluation of the project will be carried out by the Chure Board after completion of the project.

3.9 Documents Prepared by the KU/Schools/ Departments to be the Property of the both

All plans, drawings, specifications, designs, reports, other documents like Digital Data, Digital Elevation Model, GIS layers, Maps, filed data sheets; software prepared by the KU/Schools/ Departments for the Chure Board under this Agreement shall become and remain the property of the Chure Board, and the KU/ Schools/ Departments. The concerned departments shall inform Chure Board before publication of any such documents mentioned herein.

3.10 Equipment and Materials

Equipment and materials purchased by the KU/ Schools/Departments with funds provided by the Board, shall be the property of the respective university/School/department.

4. KU Schools and Departments' Personnel and Sub consultant

4.1 General

The KU/School/Departments shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

4.2 Description of Personnel

- a. The team composition will be as described proposal submitted by the respective schools/departments. Estimated period of engagement in carrying out the services of each key personnel will be as guided by technical proposal, financial proposal and minutes of meeting signed between the parties.
- b. If additional work is required beyond the scope of the Services, the estimated periods of engagement of Key Personnel may be increased by agreement in writing between the Chure Board and the KU/ Schools/Departments, provided that any such increase shall not, except as otherwise agreed in writing, cause payments under this Agreement to exceed the ceilings set forth.

4.3 Approval of Personnel

The Key personnel's to be used in carrying out of the services will be as mentioned in the proposal accepted by the Chure board.

4.4 Removal and/or Replacement of Personnel

- a. Except as the Chure Board may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the KU/School/Departments it becomes necessary to replace any of the Personnel, the respective Dean shall forthwith provide as a replacement a person of equivalent or better qualifications.
- b. If Chure Board finds any of the Personnels has committed serious misconduct then Chure Board may require the removal of such personnels from the project works. KU shall replace a person with qualifications and experience acceptable to the Chure Board.
- c. Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditure shall remain unchanged.

5. Obligations of the Chure Board

5.1 Access to Site

The KU staffs will have full access to all research sites in Nepal in respect of which access is required for the performance of the Services.

5.2 Support from Chure Board

The Chure Board shall make possible support to KU/School/Departments for the success of the project.

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5.3 Payment

In consideration of the Services performed by the KU/School/Departments under this Agreement, the Chure Board shall provide budget in the form of grants to the Kathmandu University for such payments. The payment will be requested by the respective dean office.

5.4 Release of grant

The grant will be released to KU on a trimester basis. The first release will be made immediately following the submission of first trimester work plan along with financial estimates by KU. All subsequent trimester budget release will require submission of progress report of the immediately preceding trimester and work plan of the following trimester. In case of first release, as only two months are left in the current fiscal year the release will be made only for the remainder period. If the progress of any trimester is not found satisfactory, Chure Board shall deduct an amount deemed reasonable from the grant to be released in the subsequent trimester.

6. Payments to the Concerned Schools/Departments

6.1 Remuneration and Reimbursable Expenditures

The University/School/Departments will be responsible for the expenditure of all costs involved to carry out the services.

6.2 Currency of Payment

- a. All payments to the Concerned Department for the performance of the services shall be made in the currency of the GoN..

6.3 Liquidated Damages

The Concerned School/Department shall pay liquidated damages to the Chure Board at the rate per day stated in the SC for each day that the completion services are later than the Completion Date.

7. Fairness and Good Faith

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

7.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness,



II. Special Conditions

Number of GC Clause	Amendments Of, And Supplements To, Clauses In The General Conditions Of Agreement
1	<p>The addresses are :</p> <p>Client: President Chure Tarai Madhesh Conservation Development Board</p> <p>Address: Khumaltar, Lalitpur</p> <p>Attention: Mr. Bharat Prasad Pudasaini</p> <p>E-mail: bharat.pudasaini@chureboard.gov.np</p> <p>Concerned School:</p> <p>Attention: Prof. Dr. Mohan B. Gewali Dean, School of Science</p> <p>School of Science, Kathmandu University, Dhulikhel, Nepal</p> <p>Contact: School of Science, Kathmandu University, Dhulikhel, Kavre, Nepal Tel: +977-11-661399, Ext 1121 Fax-977-011- 661443 E-mail: kusus_dean@ku.edu.np.</p>
2	<p>Notice will be deemed to be effective as follows:</p> <p>(a) in the case of personal delivery or registered mail, on delivery;</p>
3	<p>The Authorized Representatives are:</p> <p>From Chure Board: Prem Prasad Paudel, Ph.D., Section Chief, Research and Technology Development Section</p> <p>For the School: Prof. Mohan B. Gewali, Dean, School of Science</p> <p>For the Department: Prof. Tika B. Karki, Head, Department of Biotechnology</p>
4	<p>The time period shall be 30 days or such other time period as the parties may agree in writing.</p>
5	<p>The date for the commencement of services is the date on which this Agreement shall come into effect as per clause 2.1.</p>
6	<p>The time period agreed by parties in writing.</p>

Disputes shall be settled by arbitration in accordance with the following provisions:

1. Selection of Arbitrators.

Each dispute submitted by a Party to arbitration shall be heard by an arbitration panel composed of three arbitrators. The Chure Board and the concerned Schools and departments shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by Nepal Arbitration Council (NEPCA) and the arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of NEPCA.

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2. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.

3. Miscellaneous. In any arbitration proceeding hereunder:

- a. proceedings shall, unless otherwise agreed by the Parties, be held in Kathmandu
- b. the English language shall be the official language for all purposes; and
- c. the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

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7	<p>Limitation of the Concerned Departments' Liability towards the Chure Board</p> <p>(a) Except in case of gross negligence or wilful misconduct on the part of the Concerned departments or on the part of any person or firm acting on behalf of the Departments in carrying out the Services, the Department, with respect to damage caused by the Department to the Chure Board's property, shall not be liable to the Chure Board:</p> <ul style="list-style-type: none"> (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds (A) the total payments for professional fees and reimbursable expenditures made or expected to be made to the concerned school and departments hereunder, or (B) the proceeds the concerned school and departments may be entitled to receive from any insurance maintained by the concerned school and departments to cover such a liability, whichever of (A) or (B) is higher. <p>(b) This limitation of liability shall not affect the concerned school and departments' liability, if any, for damage to Third Parties caused by the concerned school and departments or any person or firm acting on behalf of the concerned school and departments in carrying out the Services."</p>
8	The Consultant shall not use these documents and GIS data for purposes unrelated to this Agreement without the prior written approval of the client.
9	The total ceiling in local currency is as per approved by the C in proposal part submitted by KU.
10	The account is: 00501030250009
11	Liquidated Damages: at the rate of 0.05 % of Agreement price per day.
12. Appointment of the Adjudicator	Appointing Authority: Nepal Arbitration Council, NEPCA

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