



MEMORANDUM OF UNDERSTANDING

DATED 16TH JANUARY 2015

SOUTH EASTERN KENYA UNIVERSITY

AND

TATA CHEMICALS MAGADI LIMITED

**Kaplan&Stratton
Advocates**

Williamson House
4th Ngong Avenue
Box 40111-00100
Nairobi
Kenya

Tel.: +254 (20) 2841000
Fax: +254 (20) 2734667
E-mail: ks@kapstrat.com
www.kaplanstratton.com

1. **SOUTH EASTERN KENYA UNIVERSITY ("SEKU")** whose address is P.O. Box 170-90200 Kitui, Kenya,

and
2. **TATA CHEMICALS MAGADI LIMITED**, a private limited company, incorporated under the laws of Kenya having its registered office at Lake Magadi and of P.O Box 1- 00205 Magadi, Kenya ("**TATA**").

WHEREAS

- (A) The university is an institution that has excelled in teaching and undertaking research in certain areas which are of interest to TATA.
- (B) The University and TATA intend to open discussions with a possibility of partnering in undertaking collaborative research projects in certain identified areas with a view to develop and exploit new products and processes (the "**Project**").
- (C) This MOU wishes to set out certain salient rights, duties and obligations of each of the parties and evidences the mutual intent of the parties to enter into an agreement to implement the partnership.

IT IS AGREED as follows:

1. **TERM**

The partnership shall be for a term of 5 years commencing on the date on which the last party executes this MoU which term shall be subject to further renewal by the Parties on such terms as shall be agreed upon by them.

2. **AREAS OF CO-OPERATION**

2.1. The parties agree to co-operate in the following areas of research:

- (a) Energy;
- (b) Mining and mineral separation techniques;
- (c) Water harvesting and conservation;
- (d) Environment and climate change;
- (e) Agriculture;
- (f) Training;
- (g) Publications; and
- (h) Any other area of mutual interest.

2.2. The Parties shall agree on the Projects to be undertaken in the above areas and any changes to the agreed research areas shall be agreed upon in writing.

3. **OBLIGATIONS OF THE UNIVERSITY**

3.1. The University shall undertake research in the areas specified in clause 2 above and such other work as shall be reasonably requested by the Company from time to time.

3.2. The research shall be carried out at the University premises or such other place as the Parties may agree from time to time.

3.3. The University shall provide the necessary manpower (including consultants where need arises), laboratories, computers and other equipment required to perform the research.

3.4. The university shall endeavor to provide facilities such as equipped laboratories in which various research activities shall be carried out.

3.5. The University shall undertake any other obligations as mutually agreed upon by both parties.

4. **OBLIGATIONS OF TATA**

4.1. TATA shall provide funds to support the research to be undertaken by the University PROVIDED that the amounts are mutually agreed upon by both parties

4.2. TATA shall offer students from the University opportunities for attachment and postgraduate research.

4.3. The University shall undertake any other obligations as mutually agreed upon by both parties.

5. **MUTUAL CO-OPERATION**

5.1. Each of the parties agrees that this MoU is entered into between them and will be performed by each of them in a spirit of mutual co-operation, trust and confidence and that each will act in good faith and will use all means reasonably available to it to give effect to the objectives of this Agreement and to ensure its compliance with its obligations.

5.2. Within 3 weeks of signing this MoU, the parties shall develop a steering team to agree on how the partnership under this MoU and the projects hereunder will be implemented, projects selection criteria, the specific roles to be played by each party and the timelines for completion of the deliverables under the partnership. The steering team shall comprise of 4 representatives of each party.

5.3. The parties shall enter into a comprehensive Research and Development Agreement within 3 months of signing this MoU detailing among others, data sharing, intellectual property rights, publishing rights, projects selection criteria, projects funding and commercial rights of each of the parties.

6. **CONFIDENTIALITY**

Each of the parties will, and will cause its agents, representatives, officers, directors, employees and advisers (together "**Representatives**") to, maintain in confidence and not

disclose to any third party the existence or terms of this MoU and the discussions taking place between the parties.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The University agrees that, during the course of the partnership, it will not enter into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would or might affect, conflict with or prejudice this MoU or the rights of the Company under it, or which would or might prejudice the general objectives of the Research.
- 7.2. The University hereby assigns to TATA, with full title guarantee, all rights in and to any Intellectual Property created or arising from the research projects for the full duration of such rights, wherever in the world enforceable, and shall procure such an assignment from any students or any other party who is involved in the projects. The University agrees to execute all documents and assignments and do all such things as may be necessary to perfect TATA's title to the Intellectual Property or to register TATA as owner of registrable rights PROVIDED that any publications emanating from the aforementioned collaboration shall be jointly owned
- 7.3. The University confirms that TATA shall have all rights of development, promotion, marketing, manufacture, distribution, exploitation and dealing in relation to the results of the research projects and the Intellectual Property created by, or arising from, therefrom.

8. EXCLUSIVITY

With effect from the date of signing of this MoU until the earlier of the date of its termination (including any extensions of such date), the University shall not, whether directly or indirectly (a) solicit any offers from, (b) enter into or continue any negotiations, discussions, agreements or understandings with, any other person or entity with respect to the research projects contemplated under this MoU, or (c) otherwise pursue, engage in or facilitate any discussion, course of action or transaction that would be likely materially to interfere with the partnership under this MoU.

9. TERMINATION OF MOU

- 9.1. Unless otherwise agreed by the parties in writing, either party shall have the right to terminate this MoU by written notice to the other party in the event that:
- (a) this MoU is not signed by all the parties on or before 1st March 2015; or
 - (b) the Research and Development Agreement is not signed by all parties within 3 months of signing this MOU (unless such date is extended by the parties in writing).
- 9.2. This MoU will automatically terminate and cease to have force and effect upon the Research and Development Agreement being entered into between the parties to this MOU.

10. **GOVERNING LAW**

10.1. The validity, construction and performance of this MOU and the Research and Development Agreement shall be governed in accordance with Kenyan law.

11. **SCOPE OF MOU**

This MoU does not purport to include all of the material terms of the partnership and, accordingly, will not obligate the parties to enter into the Research and Development Agreement provided however, that the provisions of clause 6 (Confidentiality), 8 (Exclusivity), 9 (Termination), 10 (Governing Law) and 11 (Scope of MoU) and shall be legally binding upon the parties and shall survive termination of this MoU for period of 5 years.

IN WITNESS this agreement has been duly executed.

Sealed with the common seal of
TATA Chemicals Magadi Limited
and delivered in the presence of:

Managing
Director

* Director/Secretary

Signed by

Vice-Chancellor

Duly authorised representative of:
South Eastern Kenya University



TATA CHEMICALS MAGADI LTD.
P. O. Box 1 - 00205,
MAGADI.



ROBAI MUSILVI
ADVOCATE
P.O. Box 43408 - 00100
NAIROBI.