

MEMORANDUM OF UNDERSTANDING

BETWEEN



**SOUTH EASTERN KENYA UNIVERSITY
(SEKU)**

AND



**Smart Logistics Solution Ltd
(SLS)**

PREAMBLE

This MEMORANDUM of UNDERSTANDING is between **South Eastern Kenya University (SEKU)** P.O. Box 170-90200, Kitui (hereinafter referred to as SEKU which expression shall, where the context so admit, include its successors and assigns) of the first part and the **Smart Logistics Solution Ltd (SLS)**, of P.O. Box 7590 – 00100 Nairobi, Reg. No CPR/2009/6211; PIN No. 0513088281, and having its head offices located along Machakos-Kitui road, (hereinafter referred to as SLS which expression shall, where the context so admit, its include successors and assigns).

Hereinafter SEKU and SLS will be referred to as the “Parties.”

SLS (Registered under the Companies Act Cap 486 of the Laws of Kenya on *(insert date of registration)*) is an agribusiness raw material supply company, fronting sorghum as its flagship product. Today, SLS has interests in agri-logistics that promotes collective production and postharvest infrastructure development from farming all the way to agro-industry processing. SLS’s prime assets are its people, affiliation with other partners and its strong brand equity generated from the "SLS" brand name.

SLS vision is *“to be a leading Agro-commodity contributor in a globally competitive market, by sustainably participating towards a vibrant rural economy driven by value-added agriculture for a better life for all.”* With this drive, SLS is determined to become one of tomorrow’s dry-lands crops major production centre, with future plans of processing Ethanol from the production while supporting smallholder farmers’ community.

SEKU is a public University established under the Universities Act No. 42 of 2012 with a special mandate for teaching and research in dry land Agriculture and other natural resources related Sciences. Specifically, the University is supposed to be a center of excellence in sustainable regional and national development through the advancement and expansion of opportunities in innovation, entrepreneurship for higher education, and research in dry land agriculture, forestry, mining, energy and water engineering and environmental management sciences with emphasis on the arid and semi-arid lands.

RECOGNIZING the important role that both Parties play in dry-land Agriculture, environmental conservation and management activities; and

CONSCIOUS of the various needs, constraints and changes taking place in the Agriculture and environment sector and the need to keep abreast these challenges;

The Parties enter into this MoU.

ARTICLE 1: GENERAL PROVISIONS

a) Relationship between the Parties

Nothing contained herein shall be construed as establishing a relationship of agent and principal or master and servant between the Parties. Each Party shall have full control of its operations and undertakings and shall have full responsibility for activities and duties carried by itself and on its behalf.

b) Good faith and fairness

- i) The Parties undertake to act in good faith with respect to each other's rights and obligations based on the objectives and goals of this MoU.
- ii) The Parties recognize the impracticability of providing for every contingency which may arise during or after the life of this MoU and, hereby, pledge to operate fairly and without detriment to the interests of either of them.

c) Notices

Any notice, request, consent/permission required shall be in writing and shall either be delivered in person to the authorized representative at the Head office of the Party or sent by mail or fax to such Party using the following address:

The Vice Chancellor

South Eastern Kenya University

P. O. Box 170-90200

Kitui, Kenya

Tel. +254-20-2413859/ +254-716962770

Email: principal@SEKU.ac.ke

Fax: +254-20-2318999

Chief Executive Officer

Smart Logistics Solution Limited

Machakos – Kitui road,

P.O. Box 7590-00100 Nairobi, Kenya

Email: rose.mutuku@smartlogistics.co.ke

Web: <http://www.smartlogistics.co.ke>

Tel: +254 20 2644533

Cell: +254 722 436 552

A Party may change its physical address, postal address, e-mail or fax provided that it give the other Party notice of such change in writing pursuant to this clause.

d) Authorized Representatives

Any action required or permitted to be taken and any document required or permitted to be executed under this MoU may be undertaken or executed:

- i) On behalf of SEKU by the Vice Chancellor of SEKU or his/her appointee/ assigns/ representatives/ agents.
- ii) On behalf of SLS by the Chief Executive Officer of SLS or his appointee/ assigns/ representatives/ agents.

e) **Institutional Liability**

No partnership or joint venture is created by this MoU, and neither Party can commit the other financially or otherwise to third Parties.

f) **Derivative Agreements and Detailed Work-Plans**

Detailed Program Specific Agreement and work-plans may be designed and prepared to facilitate the implementation of specific activities, projects and events within specified timeframes deriving from the main MoU.

ARTICLE 2: AREAS OF COLLABORATION

- a) Dry land Agriculture and environmental conservation and management-related projects, activities and research;
- b) Jointly implement production of Agricultural crops and environmental conservation initiatives/projects;
- c) Work jointly on community empowerment initiatives in dry land areas;
- d) Collaborate in staff capacity development programmes e.g. exchange programs and short courses;
- e) Organization and participation in conferences, workshops, symposia and seminars;
- f) Collaborate in student capacity development programmes like internships, attachments and research visits/ field trips on agreed terms;
- g) Facilitate modern Agriculture technology transfer and knowledge resources sharing;
- h) Jointly design, develop, implement and monitor and evaluate externally funded research projects/programmes in areas of the mandate of the Parties. The Parties will also explore resource mobilization opportunities and jointly undertake relevant fundraising initiatives for their collaborative initiatives and projects including research;
- i) Access and use of research facilities and equipment available with “Parties” such as the biotechnology, soil, animal, crop and other laboratories;
- j) Joint research and training activities in Agriculture and related areas;

- k) Seek to mutually benefit from government public sector supported initiatives directly or from either of the Parties. These initiatives may include and are not limited to extension services, facilities and funded technical support to representatives or assigns of the Parties, including farmers in Kitui County and the Arid and Semi-arid Lands (ASALs) in Kenya; and
- l) Undertake any other collaborative or mutually beneficial initiative/project/activity complimentary, related to or incidental to the foregoing and which can be undertaken in accordance with the MoU or any other derivative agreements and work-plans.

ARTICLE 3: DURATION OF MoU

- a) The MoU will remain in force for Five (5) years at the end of which both Parties will review the collaboration with the aim of continuing the collaboration.
- b) The detailed Agreements, which may from time to time become annexure to the main MoU, may be reviewed more frequently and regularly as specified in such Agreements and work-plans.

ARTICLE 4: CONFIDENTIALITY

Each Party shall keep confidential all information or material acquired or produced in connection with this agreement and shall not without prior written consent use or disclose or otherwise make available this information or material in any form to any person, institution or agency. This provision shall be binding upon the Parties and shall survive the termination or expiry of this agreement.

ARTICLE 5: INTELLECTUAL PROPERTY

- a) 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 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, flora/fauna 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 be jointly owned by both Parties in perpetuity.

- b) The inventors named in any patent application shall depend on the degree of contribution and subject to the patent laws of the jurisdiction and 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.
- c) Any patents arising from such collaborative initiatives/projects/activities 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 proportionately.
- d) Both Parties shall have joint rights to license programmes inventions for commercial exploitation.

ARTICLE 6: MODIFICATION/AMENDMENTS

Modification of the terms and conditions of this agreement including modification of the scope of responsibilities of the Parties, may only be made by written agreement between the Parties and the same will be incorporated as either an ADDENDUM to the main MoU or as Annexure – if it is a detailed MoU or work-plan and may be reviewed more frequently/regularly as specified in such Agreements.

ARTICLE 7: USE OF NAME AND LOGO

Neither Party shall use the name or logo, or any variation thereof, of the other Party without first obtaining its written consent.

ARTICLE 8: STANDARDS OF PERFORMANCE

The Parties agree that all obligations under this MoU and any agreement resulting from this MoU shall be performed on a manner protective of and consistent with both Parties' reputation for excellence and integrity in education, research and scholarship.

ARTICLE 9: SEVERABILITY

In the event any provision of this MoU is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this MoU so as not to cause the invalidity or unenforceability of the remainder of this MoU. All remaining provisions of this MoU shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

ARTICLE 10: FORCE MAJEURE

Neither Party shall have any liability or be deemed to be in breach of this MoU for any delays, failures or impossibility resulting from circumstances beyond the reasonable control of that Party.

ARTICLE 11: TERMINATION

- a) Either Party may terminate this MoU by giving six months written notice to the other Party.
- b) In the event of such termination of the MoU, any on-going activity under the collaboration shall be dealt with as shall be mutually agreed by the Parties.
- c) Any gain or losses in the pursuance of the objectives of this MoU that shall have been incurred at the time of termination shall be shared in mutually agreed ratios between the Parties.

ARTICLE 12: SETTLEMENT OF DISPUTES

Amicable settlement: The Parties shall make efforts and take all the necessary measures to settle conflicts or disputes arising out of or in connection with this MoU or its interpretation thereof.

Arbitration: Any dispute, conflict, difference or question, which may arise at any time, between the Parties, which cannot be settled amicably within ninety (90) days, shall be referred to an arbitrator to be agreed upon between the Parties; provided that, if the Parties fail to agree on an Arbitrator, then within 21 days of such failure to agree, the Chairman of the Chartered Institute of Arbitration, Kenya Branch in accordance with and subject to the provisions of Arbitration Act Cap 49 Laws of Kenya or any other written law or Regulation for the time being in force, shall appoint an Arbitrator for the purposes of this MoU.

ARTICLE 13: PERFORMANCE

This agreement shall be read and construed in accordance with the Laws of Kenya and the courts/tribunals in Kenya shall have jurisdiction with regard to the interpretation, performance, validity, status and resolution of disputes/conflicts arising from the MoU.

ARTICLE 14: MISCELLANEOUS

In this MoU: Expressions in the singular shall include the plural and in the masculine shall include the feminine and vice versa and references to persons shall include corporations and vice versa.

- b) References to recital, clauses and schedules/annexure are references to recitals and clauses of and schedules/ annexure to this MoU.
- c) The headings used in this MoU are inserted for convenience only and shall not affect its construction or interpretation;
- d) **Warranties:** Any individual signing on behalf of either Party represents and warrants that all steps and actions have been taken under the entity's governing instruments to authorize the entry into this MoU. Such individual shall attach authorizing documentation at the time of execution hereof.
- e) Breach of any representation contained in this paragraph shall entitle the aggrieved Party to terminate this MoU provided that such breach shall not enable the offending Party to escape its obligations undertaken in the course of implementing this MoU.
- f) **All prior agreements:** Representations and warranties, express or implied, oral or written, with respect to the subject matter hereof, are hereby superseded by this MoU.

ARTICLE 15: EXECUTION AND SIGNING

In witness whereof the Parties have affixed their common seals this 26 day of February 2013

SEALED WITH THE COMMON SEAL OF:

SOUTH EASTERN KENYA UNIVERSITY (SEKU) &



Prof. Geoffrey M. Muluvi, Vice Chancellor, SEKU

SMART LOGISTICS SOLUTION LTD (SLS)



SMART LOGISTICS SOLUTION LTD.
P. O. Box 7590 - 00100
NAIROBI - KENYA
TEL: 020 - 2644533, 0722 436552
Email: info@smartlogistics.co.ke
Website: www.smartlogistics.co.ke

Ms. Rose Mutuku, Chief Executive Officer, SLS

In the Presence of:



Legal Officer, SEKU



Company Secretary, SLS