



PROJECT AGREEMENT

BETWEEN

**THE KENYA PLANT HEALTH
INSPECTORATE SERVICE**

AND

SEEDS2B AFRICA LIMITED

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THIS PROJECT AGREEMENT (referred to as the "Agreement") IS ENTERED INTO ON THIS _____ DAY OF _____ 2020

BY AND BETWEEN:

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS) a State Corporation in the Republic of Kenya duly incorporated under the Kenya Plant Health Inspectorate Service Act No. 54 of 2012 Laws of Kenya and whose registered office is situated at Oloolua Ridge, off Ngong Road Karen, and of P.O. Box 49592- 00100 Nairobi, Kenya on the one part;

AND

SEEDS2B AFRICA LIMITED (S2B Africa), a private limited liability company duly incorporated and registered in Kenya under the Kenya Companies Act (CPR/2015/209600) and whose registered office is at L.R. № 209/311/5, Williamson House, 9th Floor, 4th Ngong Avenue, PO Box 40111-00100 Nairobi, on the other part,

Both KEPHIS and S2B Africa shall hereinafter be referred to collectively as the "Parties" and individually as "Party".

PREAMBLE:

The Parties have agreed to build and use a cold room in the KEPHIS Nakuru Regional Office for the storage of seeds in accordance with the terms of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - PURPOSE

- 1.1 The purpose of this Agreement is to provide an overall framework within which KEPHIS and S2B Africa will collaborate on development, construction, maintenance and use of one cold room at **KEPHIS Nakuru Regional Office (the Site)** for storage and preservation of NPT, DUS and Certified Irish Potato Seeds as well as any other seeds that need to be stored from both S2B Africa and KEPHIS. Priority to be given to samples for trials, NPT, DUS and post control for both parties
- 1.2 This Agreement is designed to facilitate and develop a genuine and mutually beneficial exchange process for the development of a vibrant, competitive and mature seed industry in Kenya.
- 1.3 Each party agrees to maintain professional and working relationships at all times and subscribes to a policy of equal opportunity, non-discrimination and affirmative action.



SECTION 2 - SCOPE OF ENGAGEMENT

2.1 The parties undertake that within 15 working days following execution of this Agreement, the parties shall jointly agree on an annual calendar for the activities and milestones to be carried out in connection with the construction of the cold room at the Site for the storage of seeds as well as with the determination of (i) the periods during which S2B Africa will store its seeds in the cold room, (ii) the periods during which KEPHIS will store its seeds in the cold room, as well as (iii) periods during which maintenance of the cold room equipment needs to occur. Such Annual Calendar will be updated in the latest signed minutes of the Steering Committee in accordance with section 3 below.

2.2 The general responsibilities of each Party during the term of this Agreement are as follows:

1. KEPHIS to provide enough space at no cost for S2B Africa at the Site to construct and use one cold room for use on a sharing basis between KEPHIS and S2B Africa to store Seeds for the duration of this Agreement.
2. KEPHIS to ensure at its own costs management and maintenance of the facility located at the Site where the cold room shall be located, for the duration of this Agreement. For sake of clarity, KEPHIS will bear all costs related to, on a non-exhaustive list, providing security of the site, the facility as well as the cold room, keeping the keys in a safe place and open / close the site – facility – cold room to only authorized personnel, ensuring electricity and water are in good shape and are running on a 24 hours a day / 7 days a week and 365 days a year, maintaining the cold room in good order, with no leak on the roof – properly closed door(s) and window(s), correct walls, the facility, the cold room.
3. S2B Africa to pay for the acquisition, construction and installation of all the equipment that are needed to transform the space provided by KEPHIS at the Site into a cold room where seeds can be stored.
4. Seeds2B Africa shall ensure at its own costs that the cold room is running efficiently through regular servicing and maintenance of the equipment during the period of engagement under this Agreement. For sake of clarity, this means that S2B Africa will take care of the maintenance of all the equipment necessary to the cold room.

2.3 Any further financial contributions of each Party in connection with this Agreement will be determined and agreed by both parties on a case by case basis, and will be set out in a separate supplement to this Agreement that is duly signed by the authorised representative of each Party.

2.4 Each Party warrants and represents to the other with respect to itself that it: (i) is duly incorporated and validly existing under the law of its jurisdiction of incorporation; (ii) has the full right, power, and authority to execute, deliver and perform this Agreement; and (ii) shall at all times comply with all relevant and applicable regulations/legislation.

SECTION 3 – GOVERNANCE

The highest executive authority of each Party, or their designated representatives, shall maintain ongoing official contact and shall extend reciprocal invitations to attend meetings of mutual interest.

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3.1 A steering committee made up of one authorised representative of each Party (the Steering Committee) will meet every 3 months, or more frequently as needed, to (by unanimous consent): (i) carry out a progress review of the construction of the cold room and as well as agree on any readjusting or setting of the Annual Calendar, and (ii) any other items relevant to this Agreement.

3.2 Minutes of each meeting will be written up by an appointed representative and will be approved and signed by the authorised representative of each Party. Once minutes of the Steering Committee are signed by the authorised representative of each Party, it will form an integral part of the Agreement. For avoidance of doubt the financial contributions of each Party and any other terms of this Agreement that do not explicitly refer to the being updated in accordance with the latest signed minutes, can only be amended in a separate addendum or supplemental to this Agreement that is duly signed by the authorised representative of each party.

3.3 The Parties shall agree to appoint Geoffrey Malemba to be the project manager of the Project and thus to be responsible for the overall management and reporting of the Project to the Steering Committee.

3.4 The Steering Committee may mutually agree to invite a representative of other interested stakeholder to attend a steering committee meeting.

SECTION 4 – CONFIDENTIALITY

4.1. The Parties shall, at all times while this Agreement remains in force and thereafter for a period of five years, keep confidential any and all non-public information identified as confidential that relates to any of the existing or planned activities, products, financial affairs, storage of seeds, partners and consultants of the disclosing party (the **Discloser**) and/or of any subsidiary or affiliate of the Discloser which the receiving party (the **Recipient**) may have access to in connection with this Agreement (**Confidential Information**).

4.2. The Recipient shall further refrain from disclosing any of the Confidential Information to any of its employees, officers, advisers, consultants and agents (together the **Representatives**), with the exception of the disclosure of such parts of the Confidential Information to such Representatives who have a need to know in order to properly perform its obligations under the Agreement. The Recipient shall take adequate precautions and guarantees to the Discloser that such Representatives will fully comply with the confidentiality obligations set forth herein.

4.3 Notwithstanding the foregoing, the Recipient may disclose the Confidential Information if so required by a statutory obligation or by a court or administrative order, provided that, immediately upon learning of such obligation, and prior to disclosure if lawfully possible, the Recipient notifies the Discloser in writing so that the Discloser can safeguard its legitimate interests. The Recipient shall cooperate with the Discloser in limiting the scope of the disclosure to the greatest extent legally possible.

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4.4 If the Recipient becomes aware of any unauthorized use, disclosure, access, possession or knowledge of all or any of the Confidential Information, the Recipient shall immediately notify the Discloser and take all reasonable steps requested by the Discloser to protect the confidentiality of such Confidential Information.

4.5 The Recipient shall not make any copies of the Confidential Information, except as reasonably required to meet its obligations under the Agreement.

4.6 Exempted from the above confidentiality obligations shall be Confidential Information which the Recipient can prove by written evidence:

- a) Was in the public domain at the time of disclosure by or on behalf of the Discloser;
- b) After disclosure by or on behalf of the Discloser becomes part of the public domain by publication or otherwise, except by breach of the Agreement by the Recipient;
- c) Was in the Recipient's possession prior to the time of disclosure by or on behalf of the Discloser and was neither acquired, directly or indirectly, from the Discloser;
- d) The Recipient has received from a third party, provided, however, that such information was not obtained by such third party, directly or indirectly, from the Discloser; and
- e) Was developed independently from the engagement by the Recipient with no reliance at all on any Confidential Information.

SECTION 5 – COMMUNICATIONS AND PUBLICATIONS

5.1 Either Party shall notify the other Party at least 10 working days in advance of any intended release of communications, publications, presentations, documentations or other information-sharing relating to this Agreement (collectively the Communication(s)). The commenting Party shall provide its comments within 8 working days following the notification. The Party developing the Communication(s) shall in the final version of the Communication(s) attempt to take into account the comments and considerations (if any) of the other Party. The commenting Party shall have the right to withhold endorsement or dissociate itself from the Communication(s).

5.2 The Parties agree to acknowledge the contributions of the other in executing the non-confidential activities agreed upon through the release of any media statements, publications, reports, informational materials, multimedia information or any other means used to disseminate information on these activities.

5.3 The Parties will share non confidential information of mutual concern and interest relating to the objectives of this Agreement and ensure that non confidential activities conducted during the course of this collaboration will be transparent and publicly accountable.

SECTION 6 – DURATION

This Agreement shall become effective as of the date of signature by the last Party and shall remain effective for a term of 5 (five) years. It may be amended by the written consent of the Parties.

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SECTION 7 - TERMINATION

- 7.1. Either Party may terminate this Agreement at any time by giving 6 (six) months' notice in writing to the other Party.
- 7.2 A Party may terminate this Agreement by written notice to the other Party with immediate effect if there is any material breach by the other Party of any of its obligations under this Agreement provided that, if capable of remedy, the breach is not rectified within 30 days from the date the breaching Party receives such notification.
- 7.3 Upon termination of this Agreement, each Party shall return to the other party any tools or any Confidential Information. Upon the written request of the disclosing party, each party shall either (i) return all documents in any tangible form containing Confidential Information or (ii) destroy such Confidential Information and shall certify in writing to the disclosing party the destruction of same.
- 7.4 Upon termination of this Agreement, KEPHIS will let S2B Africa remove all the equipment that have been required to transform the room into a cold room.
- 7.5 The Parties agree to negotiate in good faith in order to manage any adverse consequences in the event of a termination and a satisfactory conclusion of any obligations or activities that exist prior to the time of the proposed termination date.
- 7.6. Terms of this Agreement, which either expressly state that they are to survive expiry or termination of this Agreement or from their nature or context it is reasonably contemplated that they are to survive expiry, or termination of this Agreement shall remain in full force and effect notwithstanding expiry or termination of this Agreement. Without prejudice to the generality of the foregoing, the following provisions will survive any termination or expiration of this Agreement: 4 ("Confidentiality"), 5 ("Communications and Publications"), 7 (Termination) and 8 ("Governing Law and Settlement of Disputes").

SECTION 8 - GOVERNING LAW AND SETTLEMENT OF DISPUTES

- 8.1 The Parties agree that this Agreement shall be subject to applicable Kenyan laws and regulations, excluding the principles of conflict of laws.
- 8.2 All disputes between the parties arising out of or relating to this Agreement will be referred, firstly, to each of the parties' respective project or steering committee representatives. If, having been so referred, the dispute is not resolved within a maximum of thirty (30) days, such dispute will be referred for resolution to the parties' executive directors. If having been so referred, the dispute is not resolved within a maximum of a further thirty (30) days, the parties may agree to terminate the Framework Agreement with immediate effect.

SECTION 9 - MISCELLANEOUS

- 9.1 This Agreement may be amended at any time by the written agreement of the Parties.

- 9.2 The collaboration between the Parties are not to be deemed exclusive, and nothing in this Agreement, except for any confidentiality obligations provided in accordance with Section 4, shall limit or restrict the right of either Party to engage in any other business or to devote time and attention to any other collaboration, whether of a similar or dissimilar nature.
- 9.3 In no event will the Parties be liable to each other for any consequential, incidental, or special damages (including loss of business profits) arising from or related to this Agreement even if such party has been advised of the possibility of such damages. Each party releases the others from any such claims.
- 9.4 No Party shall act on behalf of any of the other Party or in any way bind the other Party nor do anything to cause it to be taken by third parties as acting as an agent of any of the other party, except with the specific prior written authorisation of the other Party.
- 9.5 This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.
- 9.6 Neither Party may, at any time, assign the benefit of this Agreement without the other party's prior written consent (not to be unreasonably withheld).
- 9.7 Each Party shall designate a person or office to serve as liaison for implementing this Agreement.

For KEPHIS, the contact person will be
Simeon K. Kogo, Ag. Managing Director
Email: director@kephis.org Cell: +254709891000

For S2B Africa, the contact person will be
Name: Tony Gathungu, Global Head of Seeds2B
Email: Tony.Gathungu@syngenta.com Cell: +254701100603

- 9.8 This Agreement may be signed in any number of counterparts, each of which, when signed and delivered (including by electronic means), shall be deemed to be an original and all counterparts together shall constitute one document.


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SIGNED for and on behalf of)
KENYA PLANT HEALTH INSPECTORATE)
SERVICE)
)
 by: **AG. MANAGING DIRECTOR**)

Signature: _____

In the presence of

[Signature]