

THIS MEMORANDUM OF UNDERSTANDING is made the 24<sup>th</sup> day of September 2012

**Between**

- (1) **The Government of the Republic of Sierra Leone (GOSL)** acting by each of the Ministries of Agriculture, Forestry and Food Security, Finance and Economic Development, and Trade and Industry;

**And**

- (2) **SOCFIN AGRICULTURAL COMPANY (S.L) LIMITED** Liability Company, established and Registered under the laws of Sierra Leone with company certificate of Incorporation number C.T. 626/2010 and with its registered office Hurley Beach Road, Freetown Sierra Leone hereafter called S.A.C.

**Recitals**

- A. **SAC** proposes to set up large scale oil palm plantations, and an oil extraction mill, in the Sahn Malen Chiefdom in the Pujehun District, Bum Chiefdom in the Bonthe District, Bagbo and Lugbu Chiefdoms in Bo the District, Southern Province (hereinafter referred to as "the project areas")
- B. That these investment projects must be registered with all relevant GoSL Ministries, Departments and Agencies, whose business is to encourage, attract, coordinate, and actualize private sector investments in the agriculture sector in Sierra Leone.
- C. **SAC** intends to distribute the bulk of its future palm oil production to the local Sierra Leone market until such time that local marketers can no longer absorb the produced quantities at market conditions
- D. It is intended by SAC that the first phase of the project is implemented over a 5 years period 2011 to 2016

Cultivated plantation size: 12,000 hectares

Oil mill capacity: 30 tons of FFB/hr, extended to 60 tons by 2018

Estimated new investment: 111 million US Dollars (2011-2019)

Estimated labour and contractors force: 2,414 by 2020

- E. SAC will seek to improve the livelihood of the local population by



providing transportation for the movement of fruit, building and improving social infrastructure, employing and/or contracting staff and training its workforce;

- F. **SAC** has elected to set up its project in Sierra Leone because of its favorable climatic conditions, the opportunity to improve the efficiency of production, local and regional market demand, and GOSL's commitment to improve the investment climate, the track record of the SAC's shareholders and directors and their experience of doing business in West Africa and in the palm oil sector worldwide;
- G. **SAC** has finalized the technical and environmental studies which confirm the feasibility of the project from the perspective of soil quality, climate and environmental conditions, and transport logistics.
- H. **SAC** has negotiated land lease agreements covering the project area with GoSL, the Chiefdom Councils and landowners of the Chiefdoms of Malen, Bagbo, Lugbu and Bum and will continue to do so with the help of the GoSL in order to secure sufficient concession areas for its development plan;
- I. This Memorandum of Understanding and Agreement shall be renewed after every five (5) years in line with the land lease agreements

**And whereas,**

- J. It is the policy objective of GoSL to attract large-scale foreign investments to the Agricultural sector of Sierra Leone;
- K. **GOSL** seeks to promote the expansion of local agricultural production for the local and export markets;
- L. **GOSL** seeks to increase the established production capacity of palm oil as to alleviate its dependency on imported products and boost its exports;
- M. **GOSL** welcomes labour-intensive industries which provide stable income and training to its workforce;
- N. **GOSL** promotes the establishment of sustainable economic centers in rural areas;

**Considering:**

- O. **GOSL** has agreed the project meets the policy objectives of GoSL
- P. **GOSL** recognizes the expected benefits of the project in terms of





job creation, education, stable income, and infrastructure, as well as the positive indirect effects of a large economic center in Bo, Bonthe and Pujehun Districts.

- Q. **GOSL** wants to improve the livelihood of an impoverished rural population which still suffers from the consequences of the civil war and recognizes that the project will contribute to this;
- R. **GOSL** recognizes the project will be based on
- (i) the comprehensive business plan attached to this Memorandum, and
  - (ii) the Environmental and Social Impact Assessment (ESIA) report based on the forthcoming GoSL Environmental and Social Performance Standards for Agribusiness Investments attached to the Memorandum;
- S. **GOSL** recognizes the benefits of additional agricultural production and processing capacity;
- T. **GOSL** recognizes the contribution the project is intended to make to the agricultural and other economic sectors in Sierra Leone and that it will indirectly help attract other foreign investments into the agricultural and other economic sectors,
- U. **GOSL** recognizes a readiness to grant investment incentives in the form of tax holidays and exemption of duties to SAC in connection with the project. This will be based on the relevant provisions in the Acts, Laws, regulations and policies of the GoSL
- V. **GOSL** and SAC have agreed to enter into the Memorandum of Understanding and Agreement, which is intended to have legal effect;

**It is agreed as follows;**

1. In regarding the project as a pioneer and priority investment in the agricultural sector in Sierra Leone and taking into account its investment promotion policy; GoSL supports SAC's development of the project by;
  - (i) recognizing the requirement of SAC to secure sufficient funding (capital and loans)
  - (ii) and in view of that status, to support the project by hereby agreeing to the main incentives, exemptions and rights as set out in the Appendix below,
2. **SAC** in consideration of the representation and agreements in this Memorandum agrees, to implement the project according to its business plan and to meet all project-related capital expenditures

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Institution	Fiscal Regime	Legal Provisions	Provisions in Agreement	Comment
SOCFIN Agricultural Company (S.L.) Ltd	Personal income Tax on Expatriates	National Investment Incentive legislation was agreed by cabinet but did not pass through parliament, and therefore did not become law. Second Schedule of the ITA, 2000 as amended states that the rate of tax on employment income of non-residents is 25%	Expatriates exempt from personal income tax as set out in National Investment Incentive legislation for agricultural businesses	The relevant legislation is the ITA, 2000 as the National Investment Incentive legislation did not become law.
	Charges On Imports	The ECOWAS Common External Tariff, referenced in the amended Customs Tariff Act 1978, is set at 5% for 'goods of primary necessity, raw materials and specific inputs'; 10% for 'intermediate goods'; and 20% for 'final goods'. Some deviations from this exist, but none are relevant for personal and household effects. Section 14 (3) of GST Act, 2009 states: 'The rate of GST applicable to a taxable supply or import is (a) if the supply or import is zero-rated under the First Schedule, zero per cent; (b) in any other case, 15 per cent'	Expatriates able to import personal and household effects (including one vehicle per family) free of all taxes and all custom duties (other than any prevailing ECOWAS tax which is currently set at 0.5% of the value of the applicable goods).	No legal basis for importing personal and household effects free of custom duty or import GST.

		<p>The ECOWAS Common External Tariff, referenced in the amended Customs Tariff Act 1978, is set at 5% for 'goods of primary necessity, raw materials and specific inputs'; 10% for 'intermediate goods'; and 20% for 'final goods'. Section 12 of The Finance Act, 2011 amends the rate for raw materials to 3%.</p> <p>Section 14 (3) of GST Act, 2009 states: 'The rate of GST applicable to a taxable supply or import is (a) if the supply or import is zero-rated under the First Schedule, zero per cent; (b) in any other case, 15 per cent'</p> <p>Second Schedule (section 13) states: Machinery, apparatus and appliances designed for use exclusively in (a) Agriculture, veterinary, fishing and horticulture, (b) Manufacturing, and (c) Mining and classified as exempt under the Harmonized System Commodity Classification Code are exempt from GST'</p>	<p>The import of any agricultural inputs shall not be subject to any tax or duty</p>	<p>The liability of the input for custom duty and import GST will differ depending on the type of product it is, but no input should be completely exempt.</p>
		<p>Section 11 of The Finance Act, 2011 states: 'Any person importing plant, machinery or equipment for any business purpose, excluding resale, shall be entitled to import them duty-free for any period of five years chosen by that person'.</p>	<p>The import of all plants, machineries, vehicles and equipment which are not agricultural inputs are eligible for duty-free from between 2011-2018</p>	<p>The agreement allows the import of these items for a period that is longer than that set out in legislation. Vehicles are also not duty free by the provision in law.</p>

Withholding Tax on Dividends	Section 118 of the ITA, 2000 as amended states that the rate of withholding tax payable on dividends to residents/non-residents shall be 10% of the gross amount	Withholding tax of 10% to be paid on only 50% of any dividend until 2021. From 2022, all dividends shall be subject to a withholding tax of 10%.	There is no legal basis for this. Inconsistent with the law.
Withholding Tax on Rents	Section 120 of the ITA, 2000 as amended states that the rate of withholding tax payable on rents to residents shall be 10% and to non-residents 25%	Payments of rent not subject to any withholding tax	There is no legal basis for this for this exemption. Inconsistent with the law.
Withholding Tax on Interest	Section 119 of the ITA, 2000 as amended states that the rate of withholding tax payable on interest to residents/non-residents shall be 15%	Withholding tax of 5% to be paid on interest	There is no legal basis for this reduced rate. Inconsistent with the law.
GST	Section 14 (3) of GST Act, 2009 states: 'The rate of GST applicable to a taxable supply or import is (a) if the supply or import is zero-rated under the First Schedule, zero per cent; (b) in any other case, 15 per cent' Second Schedule (section 13) states: Machinery, apparatus and appliances designed for use exclusively in (a) Agriculture, veterinary, fishing and horticulture, (b) Manufacturing, and (c) Mining and classified as exempt under the Harmonized System Commodity Classification Code are exempt from GST'	Institutional relief of GST on supplies until 2015 inclu. or any such period thereafter, when production is scheduled to start	With the exception of those supplies listed in the Second Schedule of the GST Act, 2009, there is no legal basis for this. Inconsistent with the law.

	Corporate Income Tax	Section 5 of the ITA, 2000 as amended states that the rate of income tax applicable to resident companies for the year of assessment shall be 30%	100% exemption for corporate tax on income received or accrued prior to 31 December 2022; a 50% exemption for 2023 and 25% exemption on the result of 2024.	There is no legal basis for this. Inconsistent with the law.
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anticipated in that business plan on a best effort basis, including but not limited to the clearance, earth moving, road construction and improvement, planting of oil palms, installation of a processing plant and a nursery irrigation network and system, factory installation and fit-out and related civil works, residential and social infrastructure, warehouses and workshops;

3. **SAC** agrees to permit tendering by local suppliers of relevant ancillary services, such as transportation, input supplies, warehousing, engineering and shipping, from time to time on such terms and conditions as SAC shall reasonable specify.
4. **GOGL** agrees that SAC's whole business is recognized as an Agricultural enterprise and that SAC will be granted duty waiver benefit on all agricultural inputs and incentives at least equivalent to those enjoyed by any other business operating in the agriculture, forestry or bio-energy sectors
5. Insofar as SAC considers it necessary, GoSL agrees this Memorandum will be given further effect to or be implemented in further detail by GoSL entering into such further agreement and taking such further action as SAC may reasonably request.
6. Those shareholders, their affiliates and others referred to in the Appendix as having the benefit of a right, entitlement, discretion or benefit of an obligation by GoSL, shall have direct benefit of such right, entitlement or, as the case may be, discretion and to enforce such obligation under this Memorandum.
7. This Memorandum is governed and shall be construed in accordance with the laws of the Republic of Sierra Leone and is intended to be binding on the parties.
8. This Clause applies to any claim, dispute or difference of any kind between the parties arising out of or in connection with this memorandum (a "Dispute"). That includes without limitation, any question about the Memorandum's existence, validity or termination.
  - (i) All Disputes shall be referred to and finally resolved by arbitration in London before three arbitrators under the Rules of Arbitration of the International Chamber of Commerce from time to time in force. This Clause incorporates those Rules except where they conflict with its express terms.
  - (ii) Each party shall nominate an arbitrator in the Request for Arbitration, or answer, as the case may be not later than 14 days after service of a written request by either party to do so. The parties must then seek to agree on and nominate a third arbitrator to act as Chairman within 14 days after





confirmation of the second arbitrator's appointment. Failing agreement between the parties, the two arbitrators already appointed must within 14 days nominate the third arbitrator. If any of the parties fail to nominate an arbitrator or the two arbitrators already appointed fail to nominate the Chairman, the appointments shall be made by the ICC Court or Arbitration.

- (iii) The proceedings shall be conducted in the English language. All documents submitted in the arbitration shall be in the English language, or if another language, be accompanied by a certified English translation.
- (iv) None of the parties may appeal to any court on a question of law arising out of an award made in the arbitration. The parties irrevocably waive any rights of appeal they might otherwise have had.
- (v) The award shall be final and binding on the parties or anyone claiming through or under them and judgment rendered on the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be:
- (vi) **GOSL** irrevocably and unconditionally:
  - (a) acknowledges that the execution, performance and delivery by each party of this Memorandum shall constitute a private commercial transaction entered into entirely in its commercial capacity;
  - (b) agrees that should any other party bring legal proceedings against it or its assets in relation to this Memorandum, no immunity from such legal proceedings (which shall be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself other than in respect of government buildings located in Sierra Leone or buildings forming part of a diplomatic or consular mission (except to the extent necessary to effect service of legal process), and
  - (c) consents generally in respect of any such proceedings to the giving of any relief or the issues of any process in connection with such proceedings including the making enforcement or execution against any property whatsoever (irrespective of its





use or intended use) of any order or judgment which may be made or given in such proceedings.

- (d) agrees to help the project in all ways on a best effort basis to have access to long term development funding
- (e) SAC agrees to provide electricity and necessary grid connection to the project if available presently or in future
- (f) agrees to confer all benefits including but not limited to granting of duty waivers and other investment incentives as detailed in the required laws, regulations and policies enacted and/or approved by GoSL within a particular timeframe which will not cause undue delays to implementing the projects

#### **Investor's Obligations**

1. The investor shall develop a Corporate Social Responsibility (CSR) plan based on an assessment of community needs in collaboration with local government officials, Paramount Chiefs, Representatives of land owning families, and the communities themselves;
2. The investor shall provide feasible timeframes for implementation of its agreed upon CSR responsibilities which will be agreed upon by all stakeholders;
3. The investor shall submit quarterly progress reports on its obligations based on a pre-determined monitoring plan; GoSL representatives (including but not limited to the Ministry of Agriculture, Forestry and Food Security) will conduct periodical monitoring visits;
4. Investor shall develop a smallholder or outgrower scheme as per the Guidance of GoSL. The aim of the scheme shall be to achieve food self sufficiency and ultimately security. Activities to be developed will include but not limited to providing basic agricultural inputs, training, market access, etc. in line with the Smallholder Commercialization Programme (SCP) and the Food Security flagship programme of GoSL
5. Investor shall develop a collection mechanism to collect the agricultural products of the smallholder. The investor shall have exclusive right to collect the raw material (Fresh Fruit Bunches in case of crude palm oil extraction mill) from the small holders. The price for such raw material shall be market determined.

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6. Investor shall also develop
  - a) Farmer's Training schools in the chiefdoms where its Project has leased/acquired lands. Such training schools shall focus on the crops cultivated by the investor and other cash crops with particular emphasis on rice and other food crops
  - b) The investor shall also exclusively develop areas to showcase advanced farming of one or two crops, mutually agreed with the GoSL.
  - c) The investor shall develop model farms to showcase and train people in the most appropriate irrigation techniques for the land type of its Project location
  - d) The investor undertakes to collaborate with the Ministry of Agriculture, Forestry and Food Security (MAFFS) on the Smallholder Commercialization Programme to closely work with smallholders/outgrowers in the project areas
7. Investor shall develop camp sites complete with housing for its staff and amenities. Such amenities such as hospitals, schools, drinking water and drainages shall be open for the local population. In the business plan of each Project, an amount should be earmarked for these purposes.
8. Employment opportunities:  
The investor should provide the government with a detailed Human Resource plan which includes projections for the hiring of Sierra Leonean staff at all management, middle cadre and junior levels (direct employment). Included in this Human Resource plan should be information on internship or apprenticeship opportunities and a detailed training and succession plans.
9. Investor irrevocably and unconditionally agrees that it shall not be entitled to; and shall not take any action to enforce a judgment or arbitral award against any bank account held by GoSL (including of any of its diplomatic or consular missions) within a period of 45 days from the date of such judgment or award or such longer period granted to GoSL in the judgment or award to meet the same.
10. Compliance with Local Content Policy:
11. Consistent with the policy objectives and strategic framework of





the Local Content Policy, the Investor is obliged to among others:

- Promote the utilization of locally available Sierra Leonean goods in the industrial and manufacturing sectors.
- Facilitate the development of indigenous service providers by promoting linkages with more advanced and experienced domestic and foreign firms.
- Support the growth of small and medium enterprises through targeted procurement.
- Promote employment of Sierra Leoneans.
- Develop the human and institutional capacity of Sierra Leoneans through training and transfer of knowledge and technology

**12.** Compliance with Environmental and Social Performance standards for agribusiness investments (forthcoming policy);

The Investor shall adhere to the Environmental Protection Agency Act (as amended) 2008, and other environmental regulations developed by GoSL and in line with International best practices


The Investor shall develop environmental management plan to address afforestation issues, water management, etc





## Appendix

1. Government support of the Project  
**GOSL** supports the project and agrees to provide such assistance and enter into such agreements to ensure the successful implementation of the project and its funding as SAC, its shareholders or the Funders may reasonably require from time to time.
2. Permits  
**GOSL** confirms that SAC will be granted all the required permits and other authorizations in connection with the project and its funding provided that SAC complies with all published requirements of the laws of the Republic of Sierra Leone in relation to such permits or authorizations, the details of which are generally available to the public in Sierra Leone.
3. Further permits  
**GOSL** undertakes that, should SAC (or any other person taking part or participating in the Project or its funding), at any time, be required to obtain any further permit or other authorization in connection with itself, its activities or the project (or any part of the project) or its funding, it shall take all necessary steps to ensure such permit or other authorization is issued forthwith provided that SAC or, as the case may be, such other person complies with all published requirements of the laws of the Republic of Sierra Leone in relation to such permits or authorizations, the details of which are generally available to the public in Sierra Leone.
4. Revocation of permits  
**GOSL** agrees that any permit or other authorization will only be cancelled, terminated or revoked, or amended or changed, in accordance with its terms and conditions only (which include the laws and published regulations, the details of which are generally available to the public in Sierra Leone, pursuant to which it was issued).
5. Breach of permits  
If **SAC** or other person to whom it was issued fails to abide by any terms any permits or authorization, **GoSL** (or any relevant official or public authority) may exercise any power pursuant to the laws of the Republic of Sierra Leone in respect of such failure. However, **GoSL** agrees it will not (and will procure that no official or public authority will) exercise any such power unless SAC and such other person (s) it shall specify for this purpose have first been given longer of two weeks' and any minimum statutory period of notice (the Notice) of such failure and given the opportunity, and failed within a reasonable period of time after receipt of such notice,

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to rectify, remedy or cure such failure unless, in the opinion of GoSL acting reasonably, there is a significant risk to life or the environment. If there is a significant risk to life or the environment, GoSL shall be entitled to suspend the relevant permit or authorization for the minimum period of time which could be anticipated as being reasonably necessary for an organization which is competent, experienced and efficient to prevent such risk occurring. For the purpose of this paragraph, 'reasonable period' means at a minimum period of six weeks from date to delivery of the notice.


6. Environmental and Social Assessment

The Environmental License for the project will be granted to SAC, subject to conditions only which are typical for an Environmental Licence, no later than six (6) weeks after the application is lodged unless (a) it is withheld for one or more lawful reasons which are objectively reasonable for withholding such Environmental License under the relevant laws of the Republic of Sierra Leone or (b) SAC 's environmental management plan (including the ESIA) is not being implemented to a material extent

7. Expatriates

**GOSL** agrees that the Directors, Consultants and employees (including their immediate families) of SAC and its contractors and sub-contractors shall be entitled to:

- (a) enter into, leave and reside in Sierra Leone for the purposes of the project
- (b) work in Sierra Leone (excluding immediate families who are only entitled to apply to work in relation to the same conditions that apply to other expatriates);
- (c) that SAC shall pay NASSIT contributions for Sierra Leoneans employees working for the company
- (d) be exempt from personal income tax, subject to the general rules on expatriate taxation as defined in the general benefits laid down in National Investment Incentive legislation for agricultural businesses.
- (e) bring into or import, and to export following or in anticipation of the ending of their period of residence or work, such





personal and household effects (including one vehicle per family), free of all taxes and all customs duties (other than any prevailing ECOWAS tax which is currently set at 0.5% of the value of the applicable goods) but otherwise subject to GoSL's usual terms and conditions being applied and without any discrimination and for the same to be processed through the port of entry or exit, including any customs procedures, without delay, and

**GOSL** agrees that it shall deliver without delay all documents, permits and licenses required to give effect to the foregoing.

**SAC** agrees that it will comply with all labour laws in Sierra Leone including the General Law (Business Start-Up) Amendment Act 2007.

8. Import and Export of Equipment and materials

**GOSL** agrees that SAC, its contractors and sub-contractors are entitled to import into and export from Sierra Leone without restriction all seeds, plants, fertilizers, agricultural materials relevant to crop cultivation, plant, equipment, machinery, spare parts, materials and supplies required for the construction, completion, operation and maintenance of the project (or any thereof), and that each of the same will be processed through the port of entry including any customs procedures, without delay, unless GoSL considers, acting reasonably, that there is material danger to life, property or the environment arising there from and any restriction imposed applies equally to all persons in Sierra Leone, GoSL agrees that it shall, and that it shall procure that all relevant officials or public authorities shall, deliver without delay all documents, permits and licenses required to give effect to the foregoing.

**GOSL** agrees that the import of any agricultural inputs shall not be subject to any tax or duty whatsoever.

**GOSL** agrees that all plants, machineries, vehicles and equipment which are not agricultural inputs are eligible for duty free imports from 2011 till 2018 including.

**GOSL** agrees that all duty waivers be granted at the time of import and not as a duty claw-back

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**GOSL** agrees that the following tax treatment will apply to and in respect of SAC and the other entities referred to below (but only in relation to an activity in connection with the project)

(a) **SAC** shall be entitled to claim tax deduction in respect of depreciation of its capital assets of the project from the date of commencement of commercial operations of the project. GoSL will exempt from withholding tax interest payments made by SAC to other lenders, or indirectly by SAC to SAC's shareholder's which is then paid to other lenders, which are at least 20 per cent directly or indirectly owned by a Foreign government and which has as one of its primary objectives the provision of development finance in emerging markets (**Qualifying Lender**)

(b) Subject to paragraph 9(d), SAC shall otherwise deduct withholding tax at a reduced rate of 5% from interest payments.

(c) **SAC** shall be entitled to an exemption from deduction of withholding tax on 50% of any dividend paid until 2021 provided that SAC maintains records of its financial transactions and records relevant to the sale during this period of palm oil and other agricultural products (such records to be retained by SAC for 6 years). It's agreed that the accounts are kept in USD only, all transactions in Leones or other currencies being converted at the relevant exchange rate. The remaining 50% of any dividend shall be subject to the withholding tax deduction of 10%. From 1<sup>st</sup> January 2022 all dividends shall be subject to a withholding tax 10%

(d) Payments of rent by SAC in connection with any land lease or right shall be allowable deductions for corporation tax purposes and not subject to any withholding tax.

**GOSL** and SAC agree that until 31<sup>st</sup> December 2018, direct head-office cost and management fees, which for the avoidance of doubt exclude payments for goods or services provided by a third party that is not an affiliate of SAC or the SOCFIN Group (the 'Overhead Allocation') that can be demonstrated to be properly incurred for the specific purpose or benefit of SAC's business and reimbursed by SAC will be treated as bona fide business payment and expenses representing an allowable deduction for corporate tax purposes and

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