MEMORANDUM OF UNDERSTANDING

BETWEEN

NATIONAL COMMISSION ON RESEARCH, SCIENCE AND TECHNOLOGY (NCRST)

(A Public Enterprise established in terms of section 4 of the Research, Science and Technology Act)

(Herein represented by Dr Eino Mvula in his capacity as Chief Executive Officer, him being duly authorized thereto)

(Hereinafter referred to as the "NCRST")

AND

NAMIBIAN STANDARDS INSTITUTION

(A Public Enterprise established in terms of Section 2 of the Standards Act)

(Herein represented by Ms Chie Wasserfall, Chief Executive Officer in her capacity as Chief Executive Officer, him being duly authorized thereto)

(Hereinafter referred to as the "NSI")

(Jointly referred to as the "Parties")
WHEREAS THE NCRST is a public enterprise established in terms of Section 4 of the Research, Science and Technology Act, Act No. 23 of 2004 ("the RST Act"), and is mandated to promote, co-ordinate and develop Research, Science and Technology in Namibia;

AND WHEREAS THE NSI is a public enterprise established in terms of Section 2 of the Standards Act, Act No. 18 of 2005 ("the NSI Act").

AND WHEREAS THE NCRST is mandated to manage the Research, Science and Technology Fund established in terms of section 23 of the RST Act;

AND WHEREAS NSI is mandated as the National Standards Body with the mission of promoting standardisation of products for the safety of consumers, protection of the environment and improved access to global markets;

AND WHEREAS NCRST wishes to establish a National Innovation Hub focusing on Agro-Processing and Chemical Processing Industries and further wishes to contribute and support the aims of NSI by promoting the use of standards within the National Innovation System (NIS);

AND WHEREAS NSI wishes to encourage and build capacity of the innovators and entrepreneurs in making use of standards and Total Quality Management (TQM) to grow and improve their businesses’ products, processes and management systems;

AND WHEREAS the PARTIES recognise the benefits and the need to engage, collaborate and support the benefits that can be derived from the engagement, collaboration and support herein;
NOW THEREFORE THE PARTIES RECORD THEIR AGREEMENT AS FOLLOWS:

1. The purpose of this MOU is to clearly identify the roles and responsibilities of each party as they relate to the planning of collaborative enterprise research, development and innovation and training activities of mutual interests and where appropriate, the joint funding of these planned collaborative efforts.

In particular this MOU is intended to:

1.1 Strengthen Research, Science, Technology and Innovation at NSI, in line with the priority areas as outlined in the National Programme on Research, Science, Technology and Innovation (NPRSTI) namely:

1.1.1 *Agriculture* - Promote the development of food processing technologies and other by-products industries, in order to enhance value addition for the local market and for exports.

Promote scientific knowledge acquisition and development of technology in the new emerging science of biotechnology.

1.1.2 *Manufacturing Technologies* - Strengthen systems and mechanisms for acquisition, assessment, adaptation, adoption and application of essential manufacturing technologies for industrial beneficiation processes and activities to ensure effectiveness and efficiency of product output and high quality of products.

1.1.3 *Manufacturing Technologies* - Encourage quality assurance in manufacturing.

1.1.4 *Manufacturing Technologies* - Utilise science and technology in improving national standardization, packaging and quality management programmes.

1.1.5 *Manufacturing Technologies* - Promote the adoption of standards for the production of goods and services for the local and international markets.

1.2 Strengthen technical capacity to deliver building capacity services within the NIS on a training-of-trainer basis.

1.3 Build capacity for inventors, innovators and entrepreneurs in using standards for Total Quality Management, Business Continuity and Continual Improvement.

1.4 Identify and propose research projects on appropriate methods and tools necessary to improve the quality of products, processes and management systems.
1.5 Jointly hold awareness activities pertaining to standards, science, technology and innovation.

1.6 Jointly contribute, where applicable, towards the commercialisation of research findings and innovations.

2. RESPONSIBILITIES OF THE NCRST

The NCRST shall undertake the following activities in respect hereof:

2.1 Provide resources through the Research, Science and Technology Fund for joint funding of agreed, planned collaborative activities that are in line with the purpose and scope of this MoU.

2.2 Implement joint agreed activities which will be developed under the 5-year action plan.

2.3 Support and where possible facilitate linkages between NSI and regional as well as international Capacity Building Service Providers for purposes of technical cooperation in areas within the scope of this MoU.

2.4 Provide any other support as may be mutually agreed upon.

3. RESPONSIBILITIES OF THE NSI

NSI shall undertake the following activities in respect hereof:

3.1 Provide resources to the Research, Science and Technology Fund for the promotion of agreed upon and planned collaborative activities.

3.2 Build capacity of inventors, innovators and entrepreneurs in using standards for Total Quality Management, Business Continuity and Continual Improvement as well as specific/relevant standards applicable.

3.3 Provide a discounted conformity assessment services to inventors, innovators and entrepreneurs within the National Innovation System.

3.4 Establish facilities to be used for research on standards, science, technology and innovation such as laboratories and libraries, as funds may allow.
3.5 Establish databases of inventors, innovators and entrepreneurs using standards for Total Quality Management, Business Continuity and Continual Improvement, as well as specific/relevant standards applicable.

3.6 Facilitate the development and/or adoption of the relevant industry sector standards.

3.7 Provide any other support as may be mutually agreed upon.

4. **JOINT TECHNICAL COMMITTEE**

4.1 The **Parties** shall form a Joint Technical Committee (JTC), within thirty (30) days from the Effective Date to conduct meetings quarterly.

4.2 Each **Party** shall be entitled to nominate three (3) representatives for each meeting, in terms of which either **Party** shall resume chairmanship on a rotational basis.

4.3 Notwithstanding 4.1, either of the **Parties** may request for a meeting on an urgent basis and such meeting shall be constituted within seven (7) days of it being called and shall be conducted in a formal manner, at a venue mutually agreed upon between the **Parties** hereto.

4.4 Should the JTC be unable to resolve challenges and to reach agreement on areas of improvement, falling within the scope of this Agreement, the Heads of the two institutions shall be vested with the final authority to consult and/or negotiate any difference or dispute between the **Parties** concerning the interpretation and/or implementation and/or application of any of the provisions of this Agreement with a view to reach an amicable settlement.

4.5 No remuneration shall be paid to the representatives of the **Parties** who form part of this operating committee in their capacities as such and the costs incurred by such representatives to attend the scheduled meetings will be borne by the **Party** whom they are appointed to represent.

4.6 **The Terms of Reference (TORs) for the JTC shall include:**

4.6.1 Formulate the joint-collaboration programmes for the co-funded research and development grants in areas as identified in the National Programme on Research, Science, Technology and Innovation (NPRSTI).
4.6.2 Provide funding requirements, as necessary and as budget allows and not inconsistent with either of the parties’ institutional policies for effective implementation of the agreement.

4.6.3 Evaluate all applications submitted in terms of this agreement and evaluation of which should be in terms of the set, agreed criteria;

4.6.4 Promote the exchange of information in order to further the development of cooperation herein envisaged.

4.6.5 Promote the exchange of knowledge and skills in Biosafety and emerging technology in order to further the development of cooperation herein envisaged.

4.6.6 Review progress regarding the implementation of this Agreement with the purpose of guiding the future cooperative activities/engagements.

4.6.7 Address challenges and optimize on the opportunities for improvement encountered in terms of this Agreement; and

4.6.8 Establish a five 5 Year Action Plan with detailed activities to be undertaken through this MOU.

4.6.9 To provide a biannual progress report by the last date of June and December of every year.

5. INTELLECTUAL PROPERTY (IP)

5.1 Each party to this MOU shall own the intellectual property (IP) conceived or first reduced to practice solely by its employees or agents in furtherance of projects or activities contemplated by this MOU.

5.2 IP conceived or first reduced to practice through the jointly funded activities shall be jointly owned or governed by the provisions of the definitive agreements to be entered into for the pursuance of specific projects.

5.3 Agreements signed by both parties with another third party such as in the case of the NSI, International Organization of Standardization (ISO), International Electro-Technical Commission (IEC), etc., within the context of protecting the intellectual property rights and copyrights of these third parties must be adhered to.
5.3.1 Notwithstanding the items outlined in this MOU, the parties may in addition, sign a Non-Disclosure Agreement (NDA) for specific activities.

6. EFFECTIVE DATE

This MOU will take effect from the date it is signed by both parties and will remain in force for a period of five (5) years after which it shall be extended for further periods of five (5) years on mutual written agreement.

7. CONFIDENTIAL INFORMATION

7.1 A Party will not, except as expressly authorised thereto by the other Party or required by law, disclose to any third party any Confidential Information provided by the other Party during the course of this MOU or at any time thereafter.

7.2 Provided that this provision shall not apply to the disclosure or publication for the purpose of any legal proceedings or arbitration to which the signatories hereto may be a Party, or where such confidential information has already been disclosed or published to the general public (other than as a result of a previous unauthorised disclosure, publication or use for its own purpose by either of the Parties) thereafter.

7.3 Confidential Information shall be defined as information disclosed under this MOU, which includes, but is not limited to, computer software (in object code or source code form), technical data, trade secrets or know-how, product plans, products, database information services, inventions, developments, processes, technology, designs, engineering, hardware configuration information, marketing, financial information, customer lists, business plans, business strategies or other business information.
8. INDEMNITY

8.1 NSI indemnifies NCRST, its officers and employees against all liability, loss, damage, expense or cost, which they suffer, sustain or incur as a result of any negligent act or omission by NSI, its officers or employees in relation to this MOU.

8.2 NCRST indemnifies NSI its officers and employees against all liability, loss, damage, expense or cost which they suffer, sustain or incur as a result of any negligent act or omission by NCRST, its officers or employees in relation to this MOU.

8.3 A Party’s liability to indemnify will be reduced to the extent to which any loss arises out of any negligent act or omission of the other party, its officers or employees.

8.4 Save as either party may be able to prove the contrary, under no circumstances will either Party be liable to the other Party for any damages if and to the extent caused by the other Party’s failure to perform its responsibilities or for any of the following, even if informed of their possibility:

8.4.1 loss of, or damage to data;
8.4.3 loss of profits, business revenue, goodwill or anticipated savings;
8.4.4 loss or liability incurred by either Party as a result of a third-party claim.

9. FORCE MAJEURE

9.1 Neither of the Parties shall be liable for the failure to perform any of either Party’s obligations under this MOU insofar as it proves that:

9.1.1 The failure was due to an impediment beyond its control and which could not reasonably have been foreseen and avoided at the effective date and includes inter alia the following:

9.1.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage, etc;
9.1.2 natural disasters, e.g. violent storms, cyclones, earth quakes, tidal waves, floods, lightning;
9.1.3 explosions, fires, destruction of machines, factories and any kind of installation;
9.1.4 boycotts, strikes and lock outs, go slows, picketing and work stoppages rendering performance impossible;
9.1.5 acts of authority, whether lawful or unlawful, apart from acts from which the Party seeking relief has assumed the risk by virtue of any other provision of this MOU.

9.2 For the purposes of this clause, “impediment” does not include lack of authorization of licenses, permits or approvals necessary and to be issued by the appropriate public authority.

10. BREACH AND CANCELLATION

10.1 Should either Party commit a breach of any of the terms and conditions of this MOU and fail to remedy the breach within fourteen (14) days after receiving written notice calling upon them to do so, then the other Party will be entitled, without prejudice to any other remedy it may have at common law, to cancel the MOU by written notice to that effect, to the other Party.

10.2 Either Party may cancel this MOU by giving three (3) months’ notice of its intention in writing to the other Party.

11. DISPUTE RESOLUTION

Should any dispute or differences whatsoever arise at any time between the Parties concerning this MOU or its construction or effect as to the rights, duties and/or liabilities of the Parties or any of them under or by virtue of this MOU or otherwise or as to any other matter in any way arising out of the subject matter of this MOU, then: The Parties, through their respective Heads, shall endeavour to settle the dispute between them amicably. If, within seven (7) days after the date of the delivery of the declaration of a dispute, the Parties have not settled the dispute between themselves, then in that event, either Party shall within fourteen (14) days written notice to the other Party, be entitled to cancel this MOU.
This MOU is governed by the laws of the Republic of Namibia only and is subject only to the jurisdiction of the Courts of the Republic of Namibia.

12. JURISDICTION

The Parties hereby choose as their domicilium citandi et executandi for all purposes in terms hereof at the addresses set out below:

13. DOMICILIUM AND NOTICES

13.1.1 NCRST

ERF 490, Platinum Street
Prosperita, Windhoek
NAMIBIA
Tel: +264 61 431 7000
Fax: +264 61 229928
E-mail: envula@ncrst.na
Web Address: www.ncrst.na

And

13.1.2 NSI

Channel Life Towers, M1 Floor
39 Post Mall Street
Windhoek
Namibia

Tel: +264 61 386400
Fax: +264 61 386454
13.1 The **Parties** may change their domicilium citandi et executandi with 14 (fourteen) days’ written notice to the other **Party** to any other address in the Republic of Namibia which is neither a Post Box nor poste restante.

13.2.1 All notices given in terms hereof shall be in writing and shall either be sent by pre-paid registered post, in which event it shall be deemed to have been received on the 5th day after posting, or delivered by hand, in which event it shall be deemed to have been received when so delivered.

13.2.2 All notices given in terms of this **MOU** shall be given to the **Parties** at their chosen domicilium.

14 **AMENDMENT AND VARIATION**

14.1 This **MOU** may be amended by mutual consent, in writing, as appropriate from time to time provided such amendment shall not adversely affect any on-going project.

14.2 This **MOU** constitutes the whole understanding between the **parties** herein and no warranties or representations, whether express or implied, other than those contained in this **MOU**, have been made.

14.3 No variation or addition to this **MOU** shall be of any force and effect unless reduced to writing and signed by or on behalf of the **Parties**.

15 **TERMINATION**

This **MoU** may be terminated by either **party** by giving a three (3) month notice provided such a termination shall not adversely affect any on-going project which must be sustained to completion despite the termination.
The Parties hereto have executed this MOU by their duly authorised representatives on the day and at the place referred herein, each Party receiving one (1) copy hereof.

SIGNED at Windhoek, on this 28 day of April 2017.

As Witnesses:

1. 

2.

Dr Eino Mvula
Chief Executive Officer
NCRST

SIGNED at Windhoek, on this 30th day of April 2017.

As Witnesses:

1. 

2.

Ms Chie Wasserfall
Chief Executive Officer
NSI