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, Act 23 of 2004

(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

NAMIBIA SCIENTIFIC SOCIETY (NSS)

A voluntary Association Not for Gain

(Herein represented by Ms. Waltraut Fritzache in her capacity as Chief Executive Officer, she being duly authorized thereto)

(Hereinafter referred to as the “NSS”)

(Jointly referred to as the “Parties”)
PREAMBLE

1.1. DERIOUS, to strengthen and further develop the friendly relation between the two parties in the fields of research, science, technology, and innovation;

1.2. RECOGNISING the importance of science and technology in the development of the national economy & systems of innovation as well as in the improvement of their socio-economic standards of life;

1.3. AND WHEREAS, the Government of the Republic of Namibia has established the National Commission on Research, Science and Technology to provide for the promotion, coordination and development of research, science and technology in Namibia as well as providing funding for the research, science and technology and innovation thereof;

1.4. AND WHEREAS THE NCRST has developed the National Programme on Research, Science and Technology (NPRST) in terms of section 18 of the Research, Science and Technology Act, Act No. 23 of 2004, which aims to address challenges and opportunities in the National Innovation System (NIS) by devising appropriate interventions to improve the Research, Science, Technology and Innovation (RSTI) enabling framework for Namibia;

1.5. AND WHEREAS THE NSS strives to promote the development of scientific research and dissemination of research results in Namibia;

1.6. AND WHEREAS the Parties, to fulfil their functions, have agreed to forge a strategic partnership to enable the support of research, science, technology and innovation.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE PARTIES AGREE AS FOLLOWS:

2. INTERPRETATION

2.1. In this MOU:

2.1.1. unless the context indicates otherwise, any expression which denotes:

2.1.1.1. any gender includes other genders;

2.1.1.2. a natural person, includes a juristic person and vice versa;

2.1.1.3. the singular includes the plural and vice versa;

2.1.1.4. words and phrases defined in any clause will for that clause, bear the meaning therein assigned thereto.

2.1.2. In this MOU, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

2.1.2.1. "MOU" means this document, that sets out the terms and conditions governing the collaboration between the Parties; and
2.1.2.2. "Steering Committee" means the steering committee established in terms of clause 5.3, which committee shall be responsible for inter alia overseeing the co-operation between the Parties.

2.2. Words and expressions defined in any clause shall, for that clause bear the meaning assigned to such words and expressions in such clause.

2.3. "Agreement", "this Agreement", "herein", "hereto" and "hereof" and similar expressions may be used interchangeably and refer to this MOU set out in this document and includes any annexes thereto.

2.4 "Business Day" means any day, other than a Saturday, Sunday and officially Recognised public holiday in Namibia, in terms of the Public Holidays Act No 26 of 1990;

2.5 "Commencement Date" means the date on which this Agreement commences;

2.6 "Effective Date" means the date on which this Agreement commences;

2.7 "Fund" means the Research, Science and Technology Fund established in terms of section 23 of the Research, Science and Technology Act, Act No. 23 of 2004;

2.8 "Law" means any law (including common or customary law) or statutory, constitutional, decree, judgment, treaty, regulation, directive, by-law, order or any other legislation proclaimed by government, local government, statutory or regulatory body or court;

2.9 "Months" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

2.9.1 if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

2.9.2 if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

2.10 "Namibia" means the Republic of Namibia;

2.11 "NCRST" means the National Commission on Research, Science and Technology;

2.12 "NSS" means the Namibia Scientific Society;

2.13 "Parties" means collectively the NCRST and the NSS, and "Party" means any one of them, as the context may require;

2.14 "Signature Date" means the date on which a party signs last;

2.15 "Year" means a period of 12 (twelve) consecutive Months;

2.16 The words "shall" and "will" and "must" used in the context of any obligation or
restriction imposed on a Party have the same meaning;

3. **STATUS OF MEMORANDUM**

3.1 The purpose of this MOU is to establish a strategic partnership between NCRST and the NSS, with the aim of co-operating with each other as fully set out in clause 5 below.

3.2 No Party shall present itself as the representative or agent of the other Party for any business, legal or any other reason, nor shall it have the power of authority to commit the other Party, unless it receives such other Party’s prior written consent.

3.3 Nothing in this Agreement shall be interpreted as establishing a partnership or joint venture between the Parties and does not give rise to a legally binding relationship.

3.4 Each Party agrees that it shall obtain the written approval of the other prior to using the name and/or logo of the other Party in any advertising or publicity material, and that it shall similarly obtain such written approval prior to issuing any form of representation or media statement or release in relation to the Agreement which would constitute an expressed or implied endorsement by that Party of any commercial products or service, and that it shall not authorise others to do so without having obtained prior written authorisation from that Party.

3.5 This MOU also sets out the scope, mechanisms for the implementation and monitoring of the aforesaid relationship.

3.6 Notwithstanding clause 3.3 above, the Parties enter it with good faith and generally, to direct their energies and resources to achieve its objectives.

4. **CO-OPERATION**

4.1. The Parties, agree to co-operate with each other regarding the areas and matters set out below as follows:

4.1.1 Promoting research, science, technology and innovation in Namibia;
4.1.2 Establishing and maintaining of the Namibian Journal for Research, Science, Technology and Innovation;
4.1.3 Co-hosting STI engagements and information dissemination platforms such as workshops, seminars, public lectures, national and international conferences;
4.1.4 Promoting international collaboration and networking in research, science, technology and innovation;
4.1.5 Documenting, preserving, sharing and distributing scientific information; and
4.1.6 Facilitating Technology Transfer (TT) in various areas of co-operation as indicated herein.
5. IMPLEMENTATION AND MONITORING

5.1. To initiate the implementation of this MOU, the Parties shall, 30 days after the signature of this MOU, hold topic-specific meetings to map out an implementation plan for the MOU.

5.2. In order to facilitate effective smooth functioning of their relationship, each Party shall designate a focal point who will be responsible for overseeing & coordinating the execution of specific activities foreseen in this MOU. The focal point shall exchange and/or meet as may be necessary to ensure that cooperation under this MOU is efficient and effective.

5.3. A Joint Steering Committee will be established, comprising of the 4 members representing each Party;

5.4. The Joint Steering Committee will meet on a six-monthly basis from the Effective Date of this MOU, to evaluate the performance of the relationship, identify obstacles and to propose remedial actions, including recommending amendments as may be deemed necessary. In addition, the Steering Committee will identify projects for collaboration, draw up implementation plans, define roles and responsibilities of the Parties regarding such projects and plans, as well as set outputs and time-frames for implementation.

5.5. As the primary custodians of this MOU, the chief accounting officers of both Parties, shall meet, at least once a year for the duration of the subsistence of this MOU, to take stock of the cooperative relationship and provide strategic direction and guidance to promote the effectiveness of the Parties within the National Research and Innovation System.

5.6. For the purpose of this MOU the following persons will be designated for coordinating the relationship;

5.6.1 FOR NCRST
For purposes of implementing this MOU, NCRST designates the General Manager for Innovation and Technology Development as the focal point.

5.6.2 FOR NSS
For purposes of implementing this MOU, NSS designates the ......................... as the focal point.

5.7 FINANCIAL CONTRIBUTIONS

5.7.1 To the extent that the activities set out in this MOU may require, the Parties agree that they shall each be responsible to carry the cost of their own contribution to activities carried out pursuant to this MOU.
6. INTELLECTUAL PROPERTY

Should the collaboration envisaged in this MOU result in the creation of any intellectual property, the Parties agree that the treatment of such intellectual property shall be governed by the provisions of the definitive agreements to be entered, for the pursuance of specific projects as contemplated in 4 here above.

7. CONFIDENTIALITY

7.1. This clause is legally binding.

7.2. The Parties shall keep the provisions of this MOU and any other agreements and all correspondence confidential from any third parties. Within the offices of the Parties, only the personnel who have the appropriate need to know shall have access to the provisions of such MOU, correspondence and any agreements.

8. LIABILITY

8.1 The Parties shall not be held liable for any other obligations towards each other, which is beyond the scope of this MOU.

8.2 The representatives of the Parties shall in no way be held personally liable for any claims or any other matter arising from this MOU.

8.3 Should one Party cancel this MOU for any reason whatsoever, the other Party accepts that it shall not be entitled to sue the other in respect of any damages suffered by it resulting from such cancellation.

8.4 The Parties hereby indemnify each other and holds it harmless in respect of all claims, losses and expenses, other than the areas of cooperation stipulated in clause 4 above, which may arise during the term of this MOU.

8.5 Neither Party shall be liable in terms of an inability to perform, loss or delayed performance in terms of this MOU, should such inability, loss or delay arise from a Force Majeure (acts of nature) and provided, that the existence of such a cause has been drawn to the attention of the other Party within a reasonable period of the occurrence.

8.6 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;
8.4.2 loss of profits, business revenue, goodwill or anticipated savings;
8.4.3 loss or liability incurred by either Party resulting from a third-party claim.
9. SETTLEMENT OF DISPUTES

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.

10. FORCE MAJEURE

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:

10.1 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:

10.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage, etc.

10.1.2 natural disasters, e.g. violent storms, cyclones, earth quakes, tidal waves, floods, lightning;

10.1.3 explosions, fires, destruction of machines, factories and any kind of installation;

10.1.4 boycotts, strikes and lock outs, go slows, picketing and work stoppages rendering performance impossible;

10.1.5 acts of authority, whether lawful or unlawful, apart from acts from which the Party seeking relief has assumed the risk by any other provision of this MOU.

10.1.6 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.
11. BREACH AND CANCELLATION

11.1 Should either Party commit a breach of any of the terms and conditions of this MOU and fail to remedy the breach within 14 (fourteen) 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.

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

12. AMENDMENT AND VARIATION

No amendments, alteration, cancellation, variation or addition will be valid unless reduced to writing and signed by the Parties hereto.

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

13. NO WAIVER

No extension of time or other indulgences granted by either Party in respect of either Party’s obligations will constitute a waiver of the Party’s right to enforce compliance with the terms of the MOU. Neither shall it constitute a novation of this MOU.

14. WHOLE AGREEMENT

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.

15. JURISDICTION

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.
16. ENTRY INTO FORCE, DURATION AND TERMINATION

16.1 This MOU shall enter force on the date of signature thereof.

16.2 This MOU shall remain in force for a period of five (5) years where after it may be automatically extended for further periods of five (5) years, unless terminated by either party in accordance with clause 16.3.

16.3 This MOU may be terminated by either party giving three (3) months written notice in advance of its intention to terminate it.

16.4 The termination of this MOU shall not affect the completion of any programmes or projects undertaken by the parties prior to the termination thereof, or the full execution of any cooperative activity that has not been agreed upon by the parties.

17. NOTICES

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

17.1 NCRST
Private Bag 13253
Erf No 490, Platinum Street
Prosperita
Windhoek
Attention of: the Chief Executive Officer

17.2 NSS
Windhoek
Namibia
Attention of: the Chief Executive Officer

17.3 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.

17.2.1 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.
17.2.2 All notices given in terms of this MOU shall be given to the Parties at their chosen domicilium.

18. SIGNATURES

The Parties hereto have executed this MOU by their duly authorized representatives on the day and at the place referred herein, each Party receiving one (1) original document hereof.

SIGNED at ......................... on this ................ day of .................. 2017.

As Witnesses:

1. [Signature]
2. [Signature]

[Signature]
Dr. Eino Mvula
Chief Executive Officer
NCRST

SIGNED at ........................., on this .................. day of .................. 2017.

As Witnesses:

1. [Signature]
2. [Signature]

[Signature]
Waltraut Fritzsche
Chief Executive Officer
Namibia Scientific Society