

# **MEMORANDUM OF UNDERSTANDING (MOU)**

BETWEEN

## **THE CSIR**

a statutory council, established under Act 46 of 1988 of the Republic of South Africa, Meiring Naude Road, Brummeria, Pretoria, Gauteng, herein represented by MS KHUNGEKA NJOBE in her capacity as Group Executive: R&D Outcomes and Human Capital Development and she being duly authorised thereto

(hereinafter referred to as "the CSIR")

and

## **THE NATIONAL INSTITUTE OF INDUSTRIAL TECHNOLOGY**

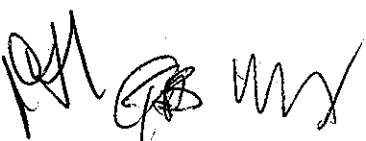
a statutory council, duly established under act 17.138/57 and ratified by law 14467 of Argentine Republic, Av. Leandro N. Alem 1067 7° Ciudad de Buenos Aires, herein represented by H. E. AMBASSADOR R. CARLOS SERSALE DI CERISANO in his capacity as Ambassador of the Argentine Republic to the Republic of South Africa and he being duly authorised thereto

(hereinafter referred to as "INTI")

(Both hereinafter referred to as "the Parties" collectively and "Party" individually)

### **WHEREAS:**

- The Parties are desirous of strengthening the friendly relations between their respective organizations and of promoting cooperation in the fields of industrial science and technology;



- The Parties wish to promote cooperation in the field of industrial science and technology ("the Field") on the basis of equality and mutual benefit in accordance with their respective laws and regulations;
- Industrial science and technology cooperation under this Memorandum of Understanding ("MOU") may take such forms as deemed appropriate by the Parties and includes, but is not limited to:
  - a. Exchange of scientists, researchers, technicians and experts;
  - b. Exchange of information of industrial science and technology nature;
  - c. Promotion of joint research and development activities in fields of mutual interest as well as exchange of the results of such research and development activities;
  - d. Contract of services or technical assistance; and/or
  - e. Any other forms of industrial science and technology cooperation agreed upon by the Parties in writing;
- The Parties possess proprietary information, technical knowledge, experience, specimens and data of a secret and confidential nature relating to the Field as specified above, all of which are regarded by them as valuable commercial assets of a highly confidential nature;
- During the course of business discussions, negotiations, meetings and activities (including, without limitation, any on-site premises visits or demonstrations) between the parties, each party may receive, observe or otherwise have access to such secret, technical, proprietary and similar information, whether inside or outside the Field, that (a) relates to the Disclosing Party's past, present or future research, development, business activities, products, services and technical knowledge and (b) either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it is obvious to the other party that it is claimed as confidential ("Confidential Information"). As used herein, the party disclosing Confidential Information is referred to as "the Disclosing Party" and the party receiving the Confidential Information is referred to as "the Recipient".
- The Parties wish to explore possible areas of collaboration between them

*[Handwritten signature]*

*[Handwritten signature]*

and wish to negotiate in good faith to conclude in due course a contractual agreement(s) relating to such areas;

**NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:**

1. The preamble hereto shall form an integral part of this agreement.

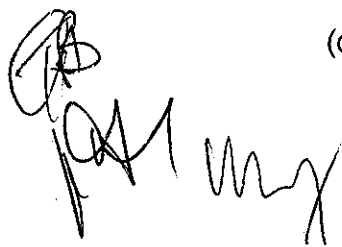
2. **CONFIDENTIALITY/SECRECY**

2.1 The Recipient shall:

- (a) treat as strictly confidential and secret any and all Confidential Information given or made known to it as a result of this agreement;
- (b) keep all such Confidential Information obtained secret towards third parties and only use it in co-operation with the Disclosing Party for the purpose expressly agreed upon by the parties and to disclose same to its employees only on the basis of the need to know;
- (c) accept responsibility for the observance of the provisions of this agreement by their employees;
- (d) if required, cause all of its employees who are directly or indirectly given access to the said proprietary and Confidential Information to execute secrecy undertakings in a form acceptable to the Disclosing Party in order to protect the parties against the unauthorised disclosure of such Confidential Information to any third party and to fully co-operate in the enforcement of such secrecy undertakings.

2.2 The above undertakings shall not apply to:

- (a) Confidential Information which at the time of disclosure is published or otherwise generally available to the public.
- (b) Confidential Information which after disclosure by the Disclosing Party is published or becomes generally available to the public, otherwise than through any act or omission on the part of the Recipient .
- (c) Confidential Information which the Recipient can show was in its possession at the time of disclosure and which was not acquired directly or indirectly from the Disclosing Party.
- (d) Confidential Information rightfully acquired from others who did not obtain it under pledge of secrecy to either of the parties.



- (e) Confidential Information which the Recipient is obliged to disclose in terms of an order of court, subpoena or other legal process. (In the event the Recipient receives a subpoena or other validly issued administrative or legal process requesting the disclosure of Confidential Information, the Recipient shall promptly notify the Disclosing Party thereof.)
- 2.3 The provisions of sub-clauses 2.1 and 2.2 shall survive any termination/cancellation of this MOU, for whatever reason, for a period of 5 (five) years following such termination/cancellation.
- 2.4 This MOU shall not confer rights to any invention, discovery, improvement or know-how currently existing or emerging from the execution of this MOU or of any further joint project on either party, and the ownership in and to such rights and the use thereof shall form the subject matter of a separate agreement(s) between the parties. Unless a separate agreement re the subject matter of this clause is subsequently entered into between the parties in writing, the provisions of this sub-clause 2.4 shall remain valid and binding on the parties for a period of 10 years.
- 2.5 It is specifically recorded that ownership in and to any intellectual property owned by either Party prior to the Effective Date hereof, shall be and remain vested exclusively with the party who at that stage owned the same.
- 2.6 No reference may be made by either Party to the other Party (or any of its operating units or centres or employees) in any marketing materials or for any other purpose whatsoever without the other Party's prior written consent, nor may either Party use the other's logo for any purposes whatsoever without the other's prior written consent.

3. **SCOPE OF THIS MOU**

- 3.1 This MOU sets out the basis on which the parties shall negotiate in good faith in order to identify a project or projects such as, but not necessarily limited to, those contained in annexure "A", with the aim of concluding a formal contractual agreement(s) relating to such identified areas of possible collaboration
- 3.2 Each party shall furthermore provide a documented breakdown and valuation to the other Party of its intended financial or other contribution to the proposed collaboration, on a project-to-project basis.
- 3.3 Nothing contained in this MOU shall be construed as binding the Parties to any form of exclusivity and both parties shall be entitled to conduct business independent of each other where market requirements so dictate, unless otherwise agreed upon in writing in a formal agreement(s) as envisaged in clause 4.1 below, which agreement(s) shall be subject to such statutory obligations as may at stage be applicable.

#### **4. PROPOSED FORMAL AGREEMENTS**

- 4.1 As envisaged by clause 3.1 above, it is the firm intention of both the Parties to enter into a formal written agreement(s) on a project by project basis, which agreement(s) will incorporate the terms of this MOU as well as such other terms as the Parties may subsequently consider desirable or necessary.
- 4.2 The Parties record by their signature hereto that this document is intended to promote a business relationship in good faith, for the benefit of both the Parties.
- 4.3 At the Effective Date hereof, the possible areas of collaboration as appear from annexure "A" hereto, have been identified.
- 4.4 The project specific agreements referenced in this Clause 4 may include, among other things:
- 4.4.1 Funding arrangements for the specific joint project, where applicable;
  - 4.4.2 The treatment of intellectual property arising from the specific joint project; and
  - 4.4.3 The treatment of industrial science and technology information of a non – proprietary nature arising from the joint project.
- 4.5 Neither the termination nor the expiry of this MOU will affect the validity of any project specific agreement already concluded pursuant to this MOU.

#### **5. AGENCY AND PARTNERSHIP**

- 5.1 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 the other Party's prior written consent.
- 5.2 Nothing in this MOU shall be interpreted as establishing a partnership or joint venture between the Parties and both Parties shall act as independent contractors.

#### **6. COMMENCEMENT AND DURATION**

- 6.1 This MOU shall operate as from the date of signature thereof ("the Effective Date") and shall remain binding for a period of 5 (five) years, unless terminated prior thereto by mutual written consent between the Parties.
- 6.2 This MOU may, after expiry thereof, be renewed by the Parties, under

mutual written agreement pursuant to the provisions of clause 9.2 below.

**7. FINANCIAL ARRANGEMENTS**

- 7.1 Each party shall be responsible for its own costs incurred in the execution of its duties in terms of this MOU, until such time as a written agreement has been reached on the contribution of each party to a specific project(s) to be executed in collaboration.
- 7.2 Save insofar as breach of clause 2 hereof is concerned and without in any way affecting the validity of this MOU, it is hereby recorded that neither party shall be liable as against each other merely as a result of premature cancellation of this MOU, unless otherwise agreed in a subsequent formal agreement(s), as envisaged in clause 4 above.

**8. DISPUTE RESOLUTION**

The Parties agree that any disputes, disagreements, issues or complaints that may arise from the execution or interpretation of this MOU will be submitted to the competence of an arbitral instance appointed by mutual written agreement.

**9. GENERAL**

- 9.1 This document and annexure "A" hereto contain the entire MOU between the Parties and neither Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.
- 9.2 No alteration, variation, addition, renewal or agreed cancellation of this MOU shall be of any force or effect unless reduced to writing as an addendum to this MOU and signed by the Parties or their duly authorized signatories.
- 9.3 No failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have.
- 9.4 No indulgence, leniency or extension of time which either Party ("the Grantor") may grant or show to the other shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.

- 9.5 Both Parties shall pay their own costs relating to the preparation and settlement of this MOU.
- 9.6 This MOU shall be for the personal benefit of each of the Parties and may not be assigned in whole or in part by either party without the prior consent of the other Party, except that a Party's interest shall be assignable without the consent of the others in pursuance of any merger, consolidation or reorganization or voluntary sale or transfer of all or substantially all the assigning Party's assets where the merged, consolidated or reorganized corporation or entity resulting therefrom or the transferee of such sale or transfer has the authority and power effectively to perform that Party's obligations to the other under this MOU.
- 9.7 If any clause or term of this MOU should be invalid, unenforceable or illegal, then the remaining terms and provisions of this MOU shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this MOU.
- 9.8 The Parties choose their addresses mentioned on the front page of this MOU as their respective *domicilium citandi et executandi* for purposes of any notices or legal process that may be served in terms of this MOU.

Signed at Tshwane ..... this 10<sup>th</sup> ..... day of November ..... 2008.

**AS WITNESSES:**

1. [Signature] .....

[Signature]  
.....  
FOR THE CSIR

2. ....

Group Executive  
.....  
CAPACITY

Signed at Tshwane ..... this 10 ..... day of November ..... 2008.

**AS WITNESSES:**

1. [Signature] .....

[Signature]  
.....  
FOR INTI

2. ....

.....  
CAPACITY

# ANNEXURE "A"

## AGREED POSSIBLE AREAS OF COLLABORATION AS PER

### CLAUSE 3.1

- Biomaterials, biodegradable materials and recycled materials;
- Nanotechnology and advanced nanoscale measurement science.
- Textiles and Apparel (wool, recycled fibers);
- Electronics and microelectronics (electromagnetic compatibility, explosive or toxic gases detectors and breath alcohol instruments); and
- Energy research with focus on renewables especially Fuel Cells, Hydrogen Economy and Photovoltaics.
- Food production.

*[Handwritten signatures and initials]*