

MEMORANDUM OF UNDERSTANDING

BETWEEN

Communications Regulatory Authority of Namibia

(A juristic person established in terms of section 4 of the Communications Act No 8 of 2009 herein represented by Mr. Festus Katuna Mbandeka, in his capacity as the Chief Executive Officer)

(Hereinafter referred to as "**CRAN**")

AND

The National Commission on Research, Science and Technology

(A juristic person established in terms of section 4 of the Research, Science and Technology Act No. 23 of 2004 herein represented by Dr. Eino Mvula, in his capacity as Chief Executive Officer)

(Hereinafter referred to as "**NCRST**")

(Hereinafter jointly referred to as the "**Parties**")

WHEREAS NCRST is an Institution established in terms of the Research, Science and Technology Act No. 23 of 2004, and is mandated to promote, co-ordinate and develop research, science and technology in all sectors of Namibia;

AND WHEREAS THE NCRST is mandated with the management of the Research, Science and Technology Fund established in terms of section 23 of the Research, Science and Technology Act No. 23 of 2004;

WHEREAS CRAN is an institution established in terms of section 4 of the Communications Act No. 8 of 2009 to among others promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the socio-economic growth of Namibia;

WHEREAS NCRST has developed the National Programme on Research, Science and Technology and Innovation (NPRSTI) in terms of section 18 of the Research, Science and Technology 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;

WHEREAS CRAN wishes to contribute and support the aims of NCRST by targeting mutually beneficial areas in Research and Development (R&D) and which place a special emphasis on empowering local talent and skills of enterprises to innovate in order to meet global and national demands for Namibian ICT products and services.

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. PURPOSE & SCOPE

The purpose of this MOU is to clearly identify the roles and responsibilities of each party as they relate to the planning of collaborative research and development, educational 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 Promote applied research and capacity development on the socio-economic impact (and assess capacity) of the usage of information technology in Namibia;
- 1.2 Promote applied research on and awareness of cyber security threats and develop globally-relevant strategies to secure ICT's resources and users of the country;
- 1.3 Promote applied research and develop application on sectoral information systems; and
- 1.4 Promote green ICT practices with specific focus on e-waste.

3. RESPONSIBILITIES OF NCRST UNDER THIS MOU

NCRST shall undertake the following activities in respect hereof:

- 3.1 Provide resources through the Research, Science and Technology Fund for joint funding of planned collaborative efforts;
- 3.2 Manage the research and development grant in line with Grant Management rules and guideline of the Research, Science and Technology Fund; and
- 3.3 Provide technical and financial reports to CRAN in line with the agreed template.

4 RESPONSIBILITIES OF CRAN UNDER THIS MOU

CRAN shall undertake the following activities in respect hereof:

- 4.1 Provide resources to the Research, Science and Technology Fund for joint funding of planned collaborative efforts; and
- 4.2 Provide topics of research within the ICT sector that are in line with the objectives of the Research, Science and Technology Fund for possible funding.

5. ESTABLISHMENT OF A JOINT TECHNICAL COMMITTEE AND ITS MEETINGS

- 5.1 The **Parties** shall form a Joint Technical Committee, within thirty (30) days from the Effective Date to conduct meetings quarterly to discuss and monitor implementation of this MOU.

- 5.2 Each **Party** shall be entitled to nominate four (4) representatives to represent it at the meetings, in terms of which either Party shall assume chairmanship on a rotational basis.
- 5.3 Notwithstanding clause 5.1 above, 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 way, at a venue mutually agreed upon between the Parties hereto.
- 5.4 Should the Joint Technical Committee be unable to resolve challenges and to reach agreement on areas of improvement, falling within the scope of this Agreement, the Principal Officers 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 MOU with a view to reach an amicable settlement.
- 5.5 No remuneration shall be paid to the representatives of the Parties who form part of the Joint Technical 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.
- 5.6 The Terms of Reference (TORs) for the Joint Technical Committee shall include:
- 5.6.1 Formulate the joint calls for application for the co-funded research and development grants in areas as identified in the National Programme on Research, Science, Technology and Innovation (NPRSTI);
 - 5.6.2 Provide funding requirements, not inconsistent to the either of the parties institutional policies for effective implementation of the MOU;
 - 5.6.3 Evaluate all applications submitted in terms of this MOU and evaluation of which should be in terms of the set criteria;
 - 5.6.4 Promote the exchange of information in order to further the development of cooperation herein envisaged;
 - 5.6.5 Review progress regarding the implementation of this MOU with the purpose of guiding the future cooperative activities/engagements; and
 - 5.6.6 Address challenges and optimize on the opportunities for improvement encountered in terms of this Agreement.

6. INTELLECTUAL PROPERTY

- 6.1 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.
- 6.2 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.
- 6.3 Notwithstanding the items outlined in this MoU, there might be a need for the parties to sign a Non-disclosure agreement (NDA) for specific activities.

7. EFFECTIVE DATE AND SIGNATURE

This MoU will take effect from the date of its signature on the date of the party signing last and will remain in force for a period of **three (3) years** after which it shall be automatically extended for further periods of **three (3) years** unless it is terminated by either party giving **six months'** notice in advance.

8. CONFIDENTIALITY

- 8.1 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.
- 8.2 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.

9. INDEMNITY

- 9.1 **NCRST** indemnifies **CRAN**, 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.

9.2 **CRAN** 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 **CRAN**, its officers or employees in relation to this MOU.

9.3 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.

9.4 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:

9.4.1 Loss of, or damage to data;

9.4.2 Special, incidental or indirect damages or for any economic consequential damages;

9.4.3 Loss of profits, business revenue, goodwill or anticipated savings; and

9.4.4 Loss or liability incurred by **CRAN** as a result of a third party claim.

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 virtue of any other provision of this MOU.

10.2 For the purposes of this clause, "impediment" does not include lack of authorisation, or 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.

11.3 If this MOU is terminated under clause 11.2, such termination shall be suspended until the later of the three (3) months' notice period or the end of the duration of this MOU.

12. 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 (seven) 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 14 (fourteen) days written notice to the other Party be entitled to cancel this MOU.

13. RELAXATION / WAIVER

No indulgence, leniency or extension of a right, which either of the **Parties** may have in terms of this MOU, and which either Party (the "grantor") may grant or show to the other Party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this MOU, or be construed as a waiver by the grantor of that right.

14. DOMICILIUM AND NOTICES

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

14.1.1 CRAN

56 Robert Mugabe Avenue
Private Bag: 13309
Windhoek
NAMIBIA
Telephone: +264 64 222 666
Fax: +264 64 222 490
E-mail: fmbandeka@cran.na
Web Address: www.cran.na

And

14.1.2 NCRST

No 22 Hamutenya-Wanahepo Ndadi Street
Olympia, Private Bag 13253, Windhoek
NAMIBIA
Tel: +264 61 431 7000
Fax: +264 61 229928
Email: emvula@ncrst.na
Web Address: www.ncrst.na

14. 2 The **Parties** may change their *domicilium citandi et executandi* on 14 (fourteen) days written notice to the other **Parties** to any other address in the Republic of Namibia which is neither a Post Box nor poste restante.

14.2.1 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.

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

15. AMENDMENT AND VARIATION

15.1 This MOU may be amended by mutual consent, in writing, as appropriate from time to time.

15.2 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. No variation of 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**.

16. SIGNATURES

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 12 day of January 2016.

As Witnesses:

1. [Signature]

2. [Signature]

[Signature]
Dr. Eino Mvula
Chief Executive Officer
NCRST

SIGNED at Windhoek, on this 12th day of January 2016.

As Witnesses:

1. [Signature]

2. [Signature]

[Signature]
Mr. Festus Katuna Mbandeka
Chief Executive Officer
CRAN