

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH

a statutory council, established under Act 46 of 1988, herein represented by Khungeka Njobe in her capacity as Group Executive: R&D Outcomes and Strategic Human Capital Development and she being duly authorised thereto

(hereinafter referred to as "the CSIR")

and

THE UNIVERSITY OF CAPE TOWN

a tertiary educational institution, duly established in terms of the Higher Education Act No 101 of 1997 , herein represented by Prof. Danie Visser in his capacity as Deputy Vice-Chancellor and his being duly authorised thereto

(hereinafter referred to as " UCT ")

Relating to:

Collaboration between the parties in the fields of research, development, training, transfer of technology and dissemination of knowledge

PREAMBLE:

- On 18 February 2004 the Parties entered into a Memorandum of Understanding (the “2004 Agreement”) in terms of which a Steering Committee was set up to discuss possible collaborations between the Parties in the fields of research, development, training, transfer of technology and dissemination of knowledge.
- The 2004 Agreement was renewed for a further 2 years in 2006 but has now come to an end.
- The Parties are of the view that the relationship established in terms of the 2004 Agreement was very fruitful, and they wish to renew this relationship.
- In addition, the Parties wish to put in place a framework to develop and co-ordinate its collaborations in certain Areas of Interest and to establish procedures for discussing and concluding collaborative research agreements (“Research Agreements”) relating to such Areas of Interest.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

The Preamble hereto shall form an integral part of this MOU.

2. SCOPE OF THIS MOU

2.1 This Memorandum of Understanding (“the MOU”) sets out the basis on which the CSIR-UCT Steering Committee, originally established in terms of the 2004 Agreement, shall continue to operate with the aim of developing and co-coordinating the Parties’ collaborations in the following Areas of Interest:

2.1.1. Materials science and manufacturing, with focus on: photonics and laser manufacturing, bio-materials and laser materials processing.

2.1.2. Natural resources and the environment, with focus on: climate change, sustainability studies, marine studies, coastal engineering, energy and mining technology.

2.1.3. Information and communications technology, with focus on: scientific computing, human language technologies, and ICT for development.

2.1.4. Biosciences and health with focus on:

- Human cell biology, including gene regulation and immune function;
- Recombinant proteins and inhibitors;
- Biomedical engineering, including artificial liver programme, ocular implants, and delivery systems;

- Synthetic organic and medicinal chemistry, including drug design;
- Photodynamic therapy/ imaging, including development and use of porphyrin-related compound; and
- The determination of macromolecular structure by electron microscopy and x-ray crystallography.

2.1.5. Defence, peace, safety and security with focus on: radar, explosive event and impact and intelligent agent software systems.

2.1.6. Human capital development in the areas listed under 2.1.1. - 2.1.5 including, joint appointments, staff exchanges, studentships and co-supervision of students in compliance with the internal requirements of the respective institutions where applicable.

2.2 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 Research Agreement(s) as envisaged in Clause 6 below.

3. STEERING COMMITTEE

3.1 The CSIR-UCT Steering Committee shall consist of the following:

3.1.1. UCT:

3.1.1.1. The Deputy Vice Chancellor holding the research portfolio

3.1.1.2. Dean of Science

3.1.1.3. Dean of Engineering and the Built Environment

3.1.1.4. A fourth member nominated by the other three UCT members

3.1.2. The CSIR:

3.1.2.1. Group Executive: R&D Outcomes and Strategic Human Capital Development

3.1.2.2. Group Executive: Research and Development

3.1.2.3. Group Manager: Human Capital Development

3.1.2.4. Manager: Strategic Research Alliances

3.2. The parties have the discretion to increase or reduce the number of members by agreement between them.

3.3. Each Party has the right to remove and replace its nominees on the Steering Committee at any time with written notice to the other parties.

3.4 In the event of the absence of a principal representative, such representative must be represented by an alternate (proxy) who shall be entitled to the same rights and privileges as the principal representative.

4. FUNCTIONS OF THE STEERING COMMITTEE

4.1. The functions of the Steering Committee are to:

4.1.1. Oversee the progress and success of the MOU in each Area of Interest;

4.1.2. Make decisions on the allocation of seed money for projects based on an agreed set of criteria and governance rules;

4.1.3. To approve and certify correct the Minutes of previous Steering Committee meetings;

4.1.4. To discuss and resolve questions regarding rights in regard to intellectual property created under this MOU or Research Agreements following from it.

4.1.5. To make recommendations regarding the future of the MOU;

4.1.6. Keep in safe custody the latest version of the MOU and all its Annexures;

4.1.7. Should it be considered necessary, appoint separate committees under the MOU on an *ad hoc* basis to discuss specific issues;

4.1.8. Should it be considered necessary, establish a clear mechanism for dealing with calls for proposals, submission of proposals, acceptance of proposals and/or completion of Research Agreements.

4.1.9. To facilitate and oversee Research Agreements entered into in terms of Clause 6 of the MOU.

4.2. The Steering Committee will meet on a regular basis and not less than twice a year.

4.3. It is hereby recorded that, during the first meeting of the Steering Committee it will be decided on the proposed time, place and *modus operandi* of the subsequent meeting(s).

4.4. Each notice of a meeting of the Steering Committee shall include an appropriate agenda for the meeting, which agenda shall be made available to all the members of the Steering Committee at least 5 (FIVE) working days prior to the proposed meeting.

5. MOU COORDINATORS

5.1. Each Party shall appoint a coordinator (the "MoU Coordinator") to coordinate the meetings of the Steering Committee and to serve as the primary contact person for day to day matters arising from the MoU.

5.2. The Parties appoint the following as their respective MoU Coordinators in the first instance:

5.2.1. For UCT: Co-ordinator for Strategic Support, Research Office

5.2.2. For the CSIR: Manager Strategic Research Alliances

5.3. Either Party may change its Coordinator by notifying the other Party of the change in writing.

6. PROPOSED RESEARCH AGREEMENTS

6.1. It is the firm intention of both the Parties to enter into Research Agreements from time to time in respect of one or more of the Areas of Interest on a project by project basis, which Research Agreements will incorporate the terms of this MOU as well as such other terms as the parties may subsequently consider desirable or necessary.

6.2. While the Parties recognise that not all collaborations between the Parties in the Areas of Interest will necessarily fall under this MoU, they wish to establish a clear mechanism for dealing with calls for proposals, submission of proposals, acceptance of proposals and completion of Research Agreements in respect of accepted proposals.

7. INTELLECTUAL PROPERTY

7.1. Unless alternative provisions are specified in the Research Agreements, the following provisions relating to the ownership and management of intellectual property developed during the course of the specific project or projects undertaken in terms of that agreement, will apply:

7.1.1. Title to any inventions, developments or discoveries resulting from the MOU made solely by the employees or registered students of one Party shall be owned by that Party.

7.1.2. Title to any invention, developments or discoveries resulting from the MoU made jointly by employees or registered students of both Parties shall be jointly owned by the Parties.

7.1.3. Any inventions or discoveries made by either Party shall be promptly disclosed to the other Party.

7.2. For each jointly owned invention or discovery, the Parties shall negotiate in good faith to determine the following (without limitation):

- 7.2.1. whether and in which jurisdictions to file for patent protection;
- 7.2.2. a commercialisation plan for the invention or discovery;
- 7.2.3. which Party should take responsibility for patent filing and commercialisation, and in which jurisdiction(s); and
- 7.2.4. how income from such commercialisation should be proportioned between the Parties.

8. CONFIDENTIALITY/SECRECY

8.1. 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, 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".

8.2. The Recipient shall,

8.2.1. treat as strictly confidential and secret any and all Confidential Information given or made known to it as a result of this agreement;

8.2.2. 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;

8.2.3. accept responsibility for the observance of the provisions of this agreement by their employees; and

8.2.4. 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.

8.3. The above undertakings shall not apply to,

8.3.1. confidential Information which at the time of disclosure is published or otherwise

generally available to the public;

8.3.2. 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;

8.3.3. 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;

8.3.4. confidential Information rightfully acquired from others who did not obtain it under pledge of secrecy to either of the parties; and

8.3.5. 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.).

8.4. The provisions of sub-clauses 8.2. and 8.3. shall survive any termination/cancellation of this MOU for whatever reason, for a period of 5 (FIVE) years following such termination/cancellation.

9. AGENCY AND PARTNERSHIP

9.1. 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.

9.2. 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.

10. COMMENCEMENT AND DURATION

10.1. 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.

10.2. This MOU may, after expiry thereof, be renewed by the parties, in accordance with Clause 12.2 below.

11. GOVERNING LAW

11.1. This MOU shall be governed by and interpreted in accordance with the laws of the Republic of South Africa and the Parties agree to any competent Court adjudicating upon any dispute arising out of this MOU, unless otherwise agreed to in writing at the time between the Parties in an Arbitration Agreement.

12. GENERAL

12.1. This document and any Annexures 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.

12.2. No alteration, variation, addition 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.

12.3. 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.

12.4. 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.

12.5. Both Parties shall pay their own costs relating to the preparation and settlement of this MOU.

12.6. 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.

Signed at this day of 2008

FOR THE COUNCIL FOR SCIENTIFIC AND INDUSTRIAL RESEARCH:

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Ms Khungeka Njobe

Group Executive: R&D Outcomes and Strategic Human Capital Development

AS WITNESSES:

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Signed at this day of 2008

FOR THE UNIVERSITY OF CAPE TOWN:

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Prof. Danie Visser, Deputy Vice Chancellor

AS WITNESSES:

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