

国際共同研究契約書サンプル

※本サンプルは委託先が海外共同研究先との国際共同研究契約書を作成する為の参考例です。本サンプルでは日本側の複数の研究機関が、海外の複数の研究機関と契約を締結するという形式になっています。本サンプルに記載のない条項であっても、必要な条項については、知財部門とのご相談あるいは当事者間の協議により適宜追加して下さい。
※NEDO は本サンプルを用いたことによる結果に責任を負いませんので、委託先ご自身でリーガルチェック等を行ってください

COLLABORATIVE RESEARCH AGREEMENT

(共同研究契約書)

THIS COLLABORATIVE RESEARCH AGREEMENT (hereinafter referred to as "Agreement") is made effective as of the last date of execution below (hereinafter referred to as "Effective Date") by and between:

★全当事者の署名日のうち、遅い方を自動的に「契約発効日」としています。

XXX University (hereinafter referred to as "XXX"), a university organized and existing under the laws of Japan, having its office at _____

Japan;

YYY Association (hereinafter referred to as "YYY"), an association organized and existing under the laws of Japan, having its office at _____

Japan;

ZZZ Corporation (hereinafter referred to as "ZZZ"), a company organized and existing under the laws of Japan, having its office at _____

Japan;

AND:

AAA University (hereinafter referred to as "AAA"), a university organized and existing under the laws of _____, having its office at _____ (国名);

BBB University (hereinafter referred to as "BBB"), a university organized and existing under the laws of _____, having its office at _____ (国名);

hereinafter referred to as "Parties" collectively or "Party" individually.

PREAMBLE:

WHEREAS, XXX, YYY and ZZZ have applied and been selected for their sole part of the collaborative research by the New Energy and Industrial Technology Development Organization (hereinafter referred to as "NEDO") for implementing the "Research and Development Program for Promoting Innovative Energy and Environmental Technologies Through International Collaboration" (hereinafter referred to as the "NEDO program").

WHEREAS, the Parties desire to conduct certain collaborative research specified in this Agreement.

★日本側機関（委託事業者）は NEDO へ資金拠出を申し込んでいること、そうした資金を受けている研究開発活動の一部としてこの共同研究開発を行うこと、などを説明しています。日本側同様の記載を相手側が望む場合には記載します。なお、研究開発に必要な費用は、日本側、相手側、それぞれで確保していただく必要があります。

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

Article 1: DEFINITIONS

第1条：定義

1.1 “Research Project” means [NEDO に資金拠出を申し込んでいる研究プロジェクト名] under the NEDO program.

★「Research Project」の定義：なお、契約の付表Aなどにより共同開発テーマを箇条書きで列挙することが望ましい。

1.2 “Research Result(s)” means any technical result obtained jointly by two or more Parties from conducting the Research Project jointly under this Agreement, including, but not limited to, any Invention (hereinafter defined), idea, design, circuit layout creation, cultivation of plant varieties, copyrightable work and know-how. For avoidance of doubt, the Research Result shall not include any technical result obtained by one Party independently without any contribution of any other Party or use of Confidential Information (hereinafter defined) provided by any other Party.

★「Research Results」の定義：「Research Results」は、共同で開発された研究成果に限定しています。よって、他当事者の機密情報を用いることなく、あるいは他当事者の貢献なしに単独で得られた研究成果は、Research Results には含まれません。

1.3 “Invention(s)” means any invention, idea, design, circuit layout creation, cultivation of plant varieties, works of authorship, software, information or data, know-how, and any other proprietary information which may be protected by Intellectual Property Rights.

★「Invention」(発明)を定義しています。

1.4 “Intellectual Property Rights” mean any and all worldwide intellectual property rights, including, but not limited to, patent rights, utility model rights, design rights, circuit layout rights, plant breeder’s rights, copyrights and know-how, and any and all rights

and interests in and to these proprietary rights and applications therefor.

★「Intellectual Property Rights」(知的財産権)を定義しています。

1.5 “Joint Application Agreement” means an agreement which may be entered into by the Parties who jointly own the Intellectual Property rights for the purpose of filing an application for protection of the Intellectual Property Rights covering the Research Results.

★「Joint Application Agreement」(共同出願契約)を定義しています。

1.6 “Confidential Information” means any information designated at the time of disclosure as “Confidential”, “Proprietary”, or some similar designation in tangible or intangible form and made available by or on behalf of one Party to any other Party in connection with or pursuant to this Agreement. Orally communicated information will be Confidential Information if it is confirmed in writing as being Confidential Information within five (5) business days after the initial disclosure. Confidential Information does not include any information that was publicly known or becomes publicly known (other than via action or inaction of the Party receiving the Confidential Information), is already in the possession of the Party receiving the Confidential Information prior to its receipt, is obtained by the Party receiving the Confidential Information without a breach of someone’s confidentiality obligations, or is independently developed by the Party receiving the Confidential Information. Notwithstanding the foregoing, the terms and conditions of this Agreement shall be regarded and treated as Confidential Information.

★「Confidential Information」の定義: どのような情報が機密情報に該当するのか、またどのような情報が機密情報から除外されるのかを定めています。委託事業者の機密情報の拡散を防止するためにも、本条項に記載された内容および手続を研究者側で徹底

することが推奨されます。本条項に定める方法・手続をとらない場合、その情報は公開情報になってしまうおそれがある点について、十分注意する必要があります。

Article 2: COLLABORATION, SCOPE OF WORK, AND RESPONSIBILITY

第2条：目的及び計画、責任分担

2.1 During the term of this Agreement, the Parties shall collaborate with each other in conducting the Research Project under this Agreement.

★契約に基づきお互い Research Project の推進に協力することを義務付けています。

2.2 This Agreement shall not prevent any Party from conducting any part of the Research Project independently from any other Party, without using any Confidential Information provided by any other Party.

★他当事者の Confidential Information を使用しない条件で、単独で Research Project の一部を開発できることを明示しています。

2.3 Each of the Parties shall satisfy its respective role and responsibility as described in Attachment 1, "Scope of Work and Responsibility".

★役割分担やスケジュールは別添(Attachment 1)に記載する形にしています。

2.4 The Parties may disclose to each other their respective Background Intellectual Properties that are known to be needed by another Party solely for the purpose of its role in this Research Project. For the purpose of this Article 2.4, "Background Intellectual Properties" mean any and all information and/or Intellectual Property Rights that a Party currently owns or controls, has in its possession, or that are developed by a Party, whether prior to or subsequent to the Effective Date, independent of this Agreement or the Research Project and without the use or access to another Party's information or Intellectual Property Rights, and which are necessary for the performance of the Research

Project.

- ★バックグラウンド IP、(プロジェクト参加者がプロジェクトの開始前から保有していた知的財産権及びプロジェクトの開始後にプロジェクトの実施とは関係なく取得した知的財産権) の取扱についても規定をしています。

2.5

2.5 Each Party shall bear its own research expenses incurred in performing its obligation under this Agreement.

Article 3: CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

第3条：守秘義務及び知的財産権

3.1 The Parties shall not use any Confidential Information received from another Party for any purpose other than conducting the Research Project jointly nor disclose such Confidential Information to any third party, without prior written approval of the providing Party. If one or more Parties concludes a funding agreement with NEDO for the NEDO program (hereinafter referred to as "Funding Agreement"), such Parties shall have a right to disclose the Confidential Information provided by another Party to NEDO to the extent NEDO agrees to maintain such Confidential Information as confidential and the Party disclosing Confidential Information shall be responsible for NEDO's compliance with such confidentiality obligation. Notwithstanding the foregoing, the Parties may disclose necessary information to external experts such as patent attorneys or lawyers who have a professional obligation of confidentiality; provided, however, that the Party disclosing Confidential Information shall be liable for any breach of confidentiality caused by the external experts.

- ★相手方から受領した機密情報は、相手方の書面による事前の同意が無い限り、共同研究以外の目的で使用してはならないとしています。また、機密情報につき、委託事業者が委

託者である NEDO に開示できるものの、NEDO の機密保持義務の遵守については委託事業者が責任を持つ必要があります。

3.2 The Research Results shall be jointly owned by the Parties who jointly obtained such Research Results unless otherwise agreed upon between those joint owners in writing. None of the Parties shall disclose the Research Results to any third party other than NEDO without the prior written consent of all joint owners of such Research Results, whose consent shall not be unreasonably withheld.

★「Research Results」の帰属と開示について示しています。「Research Results」は、1.2において共同で開発された研究成果に限定しているため、全共同開発者が書面で別途合意しない限り、成果の帰属も共有となります。また、各共同開発者が NEDO および他の共同開発者以外の第三者に研究成果を開示するためには、他の共同開発者の書面の同意が必要としています。ただし、同意を求められた場合には、正当な理由無き留保はできません。

*単独の当事者が得た成果は、当該当事者が単独で所有する旨を明記することとしても差し支えありません。

3.3 The Intellectual Property Rights originating from the Research Results shall be jointly owned by the Parties who jointly obtained such Research Results in proportion to the respective contributions made by those joint owners in the creation thereof unless otherwise agreed upon between those joint owners in writing. Any application for such Intellectual Property Rights, unless otherwise agreed upon by all joint owners of such Intellectual Property Rights in writing, shall be jointly filed, prosecuted, and maintained by those joint owners by sharing any costs and expenses of filing, prosecuting, maintaining, defending, and enforcing such Intellectual Property Rights in the same proportion, and revenues from such Intellectual Property Rights shall also be shared between those joint owners in the same proportion.

★成果への貢献度に応じて、知的財産権の持分割合を決めるだけでなく、その割合にて、特許維持の経費負担・特許ライセンス収入などの利益配分も行うことを明示しています。なお、相手側機関によっては（特に米国の大学・公的研究機関の場合）、成果の持分と費用負担・利益配分とを必ずしも一致させる必要がないと解釈していることがあります。共同研究契約に本条項を入れずに特許出願することになった場合、共同出願契約締結の際にトラブルとなるケースがありえます。共同研究契約にあらかじめ本条項を入れておくことが推奨されます。

3.4 In the event that one or more Parties is required by its Relevant Funding Authority (hereinafter defined), according to its Relevant Funding Agreement (hereinafter defined) which implements the Relevant Laws (hereinafter defined), such a party is obliged to assign its share of ownership in the Research Results and the Intellectual Property Rights originated therefrom to its Relevant Funding Authority without any other Party's consent. In that event, such a Party shall make its Relevant Funding Authority inherit and accept all conditions pertaining to that share of ownership in the Research Results and the Intellectual Property Rights, included but not limited to sharing any costs and expenses of filing, prosecuting, maintaining, defending, and enforcing such Intellectual Property Rights in the proportion to the respective contribution of each Party. Such a Party shall be liable to perform all or part of the conditions, as to be agreed between that Party and its Relevant Funding Authority, with its Relevant Funding Authority assuming responsibility for any remaining obligations. Such a Party shall provide written notice to the other Parties of this assignment of its share of ownership in the Research Results and the Intellectual Property Rights.

★契約当事者が資金拠出機関（委託事業者の場合はNEDO）のバイドール関連規定により知的財産権を当該資金拠出機関に無償譲渡する可能性があり、その場合には他の共同所有者の承認を要さないこと、また、無償譲渡に伴う資金提供機関の義務等について規定しています。

3.5 Notwithstanding Article 3.3, in the event that any joint owner of such Research Result does not intend to bear the costs and expenses relating to filing, prosecuting, maintaining, defending, and enforcing the Intellectual Property Rights originating from any Research Result, such joint owner shall waive its share of ownership in such Intellectual Property Rights.

★共有所有者の誰かが、知的財産権の登録・維持等の費用を負担しない場合には、当該共有所有者はその所有権を放棄しなければならない、という点を明示しています。この条項があれば、費用負担をしない共有所有者があつた場合に譲渡交渉を行うことが出来ます。（交渉に応じないと本条に基づき所有権を失う）

3.6 None of the joint owners of any Intellectual Property Rights hereto shall commercially exploit the Research Results or assign or grant a license to a third party for the Intellectual Property Rights thereof owned jointly by the Parties without the prior written consent of all the other joint owners.

★共有する研究成果の商業的な利用については相手側の事前同意が必要であることを明示しています。国によっては日本特許法第 73 条第 3 項（共有にかかる特許権について通常実施権許諾等する場合、他の共有者の同意が必要）のような規定がないことがあるため、本条項を入れておくことが推奨されます。

3.7 The joint owners of any Research Result shall enter into the Joint Application Agreement prior to the filing of any applications for the Intellectual Property Rights covering the Research Results and determine further details about handling of such applications and the Intellectual Property Rights unless otherwise agreed upon by those joint owners in writing.

★特許等出願前に共同出願契約を締結することが必要であり、その点を明示しています。

3.8 Any Party may use the Research Results without any payment to the other Parties in its own educational and research activities.

★全当事者は、自らの内部の教育・研究目的であれば無償で成果を使用できることを明示しています。

3.9 Each Party shall ensure that its employees and third parties (such as students and contractors) involved in the Research Project have assigned to that Party any Intellectual Property Rights (including agreeing not to exercise any moral rights with respect to the Invention) which they have in the Inventions in order to be able to give effect to the provisions of this Article 3.

3.10 及び 3.11
は、NEDO 約款遵
守との関係で必ず
含めてください。

3.10 The Parties acknowledge that if one or more Parties concludes with a funding authority (a "Relevant Funding Authority") a funding agreement (a "Relevant Funding Agreement"), which implements the provisions of the U.S. Bayh-Dole Act, the Industrial Technology Enhancement Act of Japan (known as Japanese Bayh-Dole system) or any other similar laws ("Relevant Laws"), such Parties are obliged to comply with their obligations under their Relevant Funding Agreement with their Relevant Funding Authority, including, but not limited to, the obligations regarding their Intellectual Property Rights in any Invention originating from the Research Project such as granting to their Relevant Funding Authority of an irrevocable, royalty-free, non-exclusive license for any governmental purpose in such Intellectual Property Rights; and submitting to their Relevant Funding Authority of reports, surveys, and other forms regarding usage of such Intellectual Property Rights. Each Party agrees that this Agreement shall not affect or hinder the performance of another Parties' obligations to that other Party's Relevant Funding Authority under that other Party's Relevant Funding Agreement, and each Party shall cooperate with another Party who concludes the Relevant Funding Agreement with the Relevant Funding Authority in

connection with performance of its obligations to that other Party's Relevant Funding Authority, including, but not limited to, providing information for submission of reports; and consenting to grant of license. For the purpose of this Agreement, in the case of XXX, YYY or ZZZ, its Relevant Funding Authority means NEDO and its Relevant Funding Agreement means the Funding Agreement.

- ★日本及び共同研究先所在国のバイドール関連規定に関する委託事業者及び共同研究先の「遵守義務」と「協力義務」について規定しています。なお、少なくとも、「①委託事業者の NEDO 委託契約の遵守義務」と「②共同研究先の①に対する協力義務」について規定することが必要です。

3.11 Throughout the term of this Agreement, each Party will keep and maintain records related to the Research Project in a good scientific manner so as to reflect work done and the Research Result achieved under the Research Project. The Parties shall each cooperate to promptly draft a final report (to be submitted to NEDO) that describes the Research Result learned during the term of this Agreement.

- ★共同研究に係る成果報告への協力を明示しています。

Article 4: PUBLICATION

第4条：研究成果の公表

4.1 The Parties agree that any Research Results which have value for scientific, industrial, or other social use may in principle be made available to the public by any Party, subject to (i) compliance with the provisions of Articles 3.1 and 3.2; and (ii) securing the Parties' right to obtain Intellectual Property Rights for such Research Results.

- ★3.2, 3.3の規定に従い、かつ、知財権が確保できることを条件として、一方の当事者により成果を公表できるということを定めています。

4.2 Notwithstanding Article 4.1, any Party shall have a right to publish the Research Results if any other Party who owns the Research Results (i) objects to the publication thereof to secure its right to file for the Intellectual Property Rights application covering such Research Results, (ii) does not take any action within [] days to secure the application filing for such Intellectual Property Rights, and (iii) does not agree otherwise in writing with the Party who wishes to publish the Research Results.

★4.1により知財を確保するために公表しないよう申し出たにもかかわらず、○日以内に知財確保のためのアクションを取らず、かつ、別途の合意も形成しようとししない場合は、公開してもかまわないとしています。共同研究先による一方的かつ遅々として進まない知財の出願準備のために、論文発表等を大幅に遅らせないために定めています。

Article 5: DISPUTE RESOLUTION

第5条：紛争の解決

5.1 Any issues that are not addressed or stipulated in this Agreement shall be agreed upon and resolved through negotiation and discussion in good faith between the Parties.

★紛争解決の原則です。本契約に定めのない事項については、全当事者は誠意をもって協議するものとします。

5.2 The Parties agree that in the event of any dispute arising out of or in connection with this Agreement (hereinafter referred to as the "Dispute"), the Parties shall, in the first instance, resolve the Dispute by amicable negotiation in good faith upon any Party giving written notice to the other Parties (hereinafter referred to as the "Negotiation Notice") to enter into such negotiation. If no agreement is reached between the Parties within XX days after such Negotiation Notice was given, the Dispute shall be referred to and finally

resolved by arbitration in Tokyo, Japan (in the case where XXX, YYY or ZZZ is the defendant), in [] (in the case where AAA is the defendant) or in [] (in the case where BBB is the defendant). The language used will be English. In each case, the arbitration shall take place under the International Chamber of Commerce rules. The number of arbitrators shall be one. The decision of the arbitrator shall be final and binding and may be used as a basis for enforcement of this Agreement.

★紛争解決の手段です。仲裁地の決め方、最終的な仲裁方法を定めています。共同研究先が訴えられた場合の仲裁地は空欄としておりますが、契約締結時に共同研究先に指定していただきます。

Article 6: LIABILITY

第6条：免責

None of the Parties shall be liable to any of the other Parties for any damages, including incidental, indirect, special, or consequential damage of any kind whatsoever; suffered by any of the other Parties due to any event arising from the Research Project.

★各当事者は、共同研究に起因して他の当事者に発生した損害に関して責任を負はないことを明示しています。

Article 7: DURATION OF AGREEMENT

第7条：契約期間

7.1 This Agreement shall come into effect on the Effective Date, and it shall remain in force until (month)(date), (year), unless otherwise terminated sooner by mutual agreement by all of the Parties.

★契約期間を定めています。NEDO との委託契約期間中に本契約が効力を失わないよう、委託契約期間を含んだ期間を設定してください。

7.2 If the other Parties [A. unanimously/B. in the majority] agree to do so (such agreement shall not be unreasonably withheld), they may treat any Party as

having withdrawn from the Research Project upon thirty (30) days prior written notice to that Party upon a material breach by that Party of any of its obligations under this Agreement; provided, however, that such withdrawal shall become effective only if the breaching Party shall fail to (i) remedy or cure the breach within such thirty (30) day period, or initiate a remedy or cure within such period if it is not practicable to complete the cure in such period; or (ii) within such thirty (30) day period, provide written notice of the breaching Party's dispute of the alleged breach or failure to cure and its invocation of the dispute resolution provisions set forth in Article 5.2.

★契約解除条項です。機密保持違反や法令違反に備えた一般的な解除条項となります。

7.3 The provisions in Articles 3, 4, 5, 6, and 9 shall remain in force after the expiration or termination of this Agreement or the withdrawal of any Party.

★一部の内容は契約終了後も有効であるということを定めています。

Article 8: COMPLIANCE WITH LAWS AND REGULATIONS

第8条：法・規則の準拠

Each Party shall observe all applicable laws, regulations, and treaties, including export control laws and regulations, and all relevant international agreements such as the Convention on Biological Diversity, and guidelines of the countries and institutions in which it conducts the Research Project.

★国際共同研究において注意すべき点の一つは輸出管理です。注意喚起の意味もあり、具体的な言及をしています。米国における実際の事例では、米国の大学教授が自身の研究室の留学生に情報を開示し、それが「みなし輸出」として教授が逮捕されたケースなどもあります（米国の輸出管理法では、永住権をもたない非米国市民への米国内での情報開示が『みなし輸出』として輸出扱いになるため）。また、生物多様性条約についても、本条項で言及しています。

Article 9: MISCELLANEOUS

9.1 None of the Parties shall be responsible in damages to any of the other Parties for any failure or delay in performance of any of its obligations hereunder due to any war, earthquake, riot, fire, flood, explosion, or other disaster or similar event or any governmental act or regulation or action or embargo, any act of God and any other event beyond such Party's control (hereinafter referred to as the "Force Majeure Event"); provided, however, that such Party shall take all steps reasonably possible to mitigate damages caused by such failure or delay. In the event that a Party (hereinafter referred to as the "Affected Party") shall claim that a Force Majeure Event has occurred thereby resulting in the failure or delay in its performance hereunder, the Affected Party shall give to the other Parties notice in writing within ten (10) days from the date of occurrence of such Force Majeure Event and shall provide sufficient written evidence thereof, including the nature and effect of the Force Majeure Event on its obligations. Notwithstanding the foregoing, if such failure or delay shall continue for more than six (6) months, the non-affected Party shall have the right, at any time thereafter during the continuance of such failure or delay, to terminate this Agreement.

★不可抗力が生じた際の免責と、生じた際の手続を定めています。

9.2 All notices or other communication required by or permitted to be given or made hereunder shall be in writing and, to be legally effective, shall be delivered by prepaid registered post, or by facsimile or e-mail transmission addressed to the intended recipient thereof, which shall be confirmed later by registered

airmail or reputable overnight courier. When any change occurs to the contact information below, the Party for whom the information has changed shall promptly notify the other Parties of the change(s).

To XXX:

[Addressee]
[Address]
[Phone]
[Fax]
[e-mail]

To AAA:

[Addressee]
[Address]
[Phone]
[Fax]
[e-mail]

To YYY:

[Addressee]
[Address]
[Phone]
[Fax]
[e-mail]

To BBB:

[Addressee]
[Address]
[Phone]
[Fax]
[e-mail]

To ZZZ:

[Addressee]
[Address]
[Phone]
[Fax]
[e-mail]

★連絡・通知方法です。

9.3 This Agreement and all rights and obligations under this Agreement shall be governed by and construed in accordance with the laws of Japan.

★本サンプルでは、日本法を準拠法としております。相手機関との関係、交渉の進捗に応じて、準拠法を定めることとなりますが、委託先が対応可能である必要があります。

9.4 If a court of competent jurisdiction holds that (i) any

portion of this Agreement is void, voidable, illegal, or otherwise unenforceable; or (ii) this Agreement would be void, voidable, illegal, or otherwise unenforceable unless a portion of this Agreement were severed from this Agreement, then such portion shall be automatically deemed to be severed and removed from this Agreement and shall not affect the continued effectiveness of this Agreement unless to do so would irrevocably change the underlying purpose of this Agreement.

★契約の一部に法的強制力がないと認められた場合の取り扱いについて定めています。

9.5 This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements and discussions in connection with the subject matter of this Agreement, and it is expressly declared that no variations of this Agreement shall be effective unless agreed by the Parties in writing.

★本契約書の効果。本契約と相反する口頭・文書による合意があっても、本契約が優先する旨、明示しています。

Each Party shall sign xx identical copies of this Agreement and retain one copy. (In the event that any signature is delivered by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the Party executing with the same force and effect as if "pdf" signature page were an original thereof.)

★ () 内は郵送等の遅延リスクを考慮し、全ての当事者の原紙への署名を待たず、電子メールで送付したPDF版の署名も効力を持つこととする場合の記載例です。本記載の必要性については、当事者間での確認が必要です。

Date: _____

Date: _____

XXX:

AAA:

President

Date: _____

YYY:

President

Date: _____

BBB:

President

Date: _____

ZZZ:

President

Date: _____

President

Date: _____

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