

A. 国際共同研究契約書ひな形

(注記) 日本及び相手国とも大学、公的研究機関のみで、企業が含まれない場合のもので、相手国として、米国を例示しています。他国の場合、それぞれの国の準拠法などを引用する必要があります。

COLLABORATIVE RESEARCH AGREEMENT

(共同研究契約書)

This COLLABORATIVE RESEARCH AGREEMENT (“Agreement”) is made effective as of the last date of execution below (“Effective Date”) by and between:

★両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。

AAA University (hereinafter referred to as “AAA”), a University organized and existing under the laws of Japan, having its principal office at _____

Japan;

AND:

BBB University (hereinafter “BBB”), a University organized and existing under the laws of the United States of America, having its principal office at _____

U.S.A.;

AAA and BBB are hereinafter collectively referred to as the “Parties”, and individually referred to as a “Party”.

PREAMBLE:

WHEREAS, AAA is participating in the AI to Redesign Scientific Exploration (“ARiSE”) under which Japan Science and Technology Agency (“JST”) has consigned certain research activities to AAA.

WHEREAS, BBB is participating in [INSERT PROGRAM NAME] under which [INSERT BBB CONSIGNER] has consigned certain research activities to BBB.

WHEREAS, AAA desires to conduct certain collaborative research with BBB under the ARiSE.

WHEREAS, BBB desires to conduct such collaborative research with AAA under the [INSERT PROGRAM NAME].

★日本側機関はJ S Tから資金を受けていること、相手側機関は別組織から資金を受けていること、それぞれの機関が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開発を行うこと、などを説明しています。

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 the research project consigned to AAA by JST under the agreement dated [DATE] between AAA and JST under the ARiSE (hereinafter “JST Sponsored Agreement”), and consigned to BBB under the agreement dated [DATE] between BBB and [BBB CONSIGNER] (hereinafter “ [BBB CONSIGNER] Sponsored Agreement”).

★「Research Project」の定義：ここでは、「それぞれの機関が受託している研究」という表現にしています。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 results obtained jointly by the Parties from conducting the Research Project under this Agreement, including, but not limited to, any Invention (defined in Article 1.3), idea, design, copyrightable work, know-how and anything otherwise protectable as Intellectual Property Rights (defined in Article 1.4). For avoidance of doubt, the Research Result shall not include any technical result obtained by one Party independently without any contribution of the other Party or use of Confidential Information (defined in Article 1.6) provided by the other Party.

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

1.3 “Invention(s)” means any invention, idea, design, works of authorship, software, information or data, know-how and any other proprietary information which may be protected by Intellectual Property Rights, which is/are created, made, invented, developed, discovered, or reduced to practice jointly by the Parties from conducting

the Research Project under this Agreement.

★「Invention」（発明）を定義しています。

1.4 “Intellectual Property Rights” mean any and all world-wide intellectual property rights, including, but not limited to, patents, utility models, designs, 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 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 the 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: (i) was publicly known or becomes publicly known (other than via action or inaction of the Party receiving the Confidential Information), (ii) is already in the possession of the Party receiving the Confidential Information prior to its receipt, (iii) is obtained by the Party receiving the Confidential Information without a breach of someone’s confidentiality obligations, or (iv) 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。日本側機関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となってしまうおそれがある点、十分注意する必要があります。

Article 2: COLLABORATION

第2条：目的及び計画

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

★契約中はお互い 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 the other Party, without using any Confidential Information provided by the other Party.

★相手の 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。

Article 3: CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

第3条：守秘義務及び知的財産権

【注意】

知的財産が生じる可能性のない研究であっても、「取り決める必要が生じた際に、別途取り決める」などとしておくことが推奨されます。

- 3.1 Each Party who receives the Confidential Information of the other Party acknowledges and agrees that all Confidential Information disclosed by the disclosing Party is and shall remain the sole and exclusive property of the disclosing Party.
- 3.2 The receiving Party agrees to keep any Confidential information of the disclosing Party confidential and not disclose it to any third party without the prior written consent of the disclosing Party.
- 3.3 The Parties shall not use any Confidential Information received from the other Party for any purpose other than conducting the Research Project jointly without prior written approval of the providing Party. AAA shall have a right to disclose the Confidential Information provided by BBB to JST to the extent JST agrees to maintain such Confidential Information confidential, and AAA shall be responsible for JST's compliance with such confidentiality obligation. BBB shall have the right to disclose the Confidential Information provided by AAA to [BBB consigner] to the extent [BBB consigner] agrees to maintain such Confidential Information confidential, and BBB shall be responsible for [BBB consigner]'s compliance with such confidentiality obligation.
- 3.4 Upon the expiration or termination of this Agreement, the receiving Party shall: (i)

return to the disclosing Party all Confidential Information of the disclosing Party and all copies thereof, regardless of its form and (ii) destroy any Confidential Information of the disclosing Party that cannot be returned.

★相手方から受領した秘密情報は、相手方に単独で帰属し、相手方の書面による事前の同意が無い限り、第3者への開示を禁止しています。また、秘密情報につき、各機関がそれぞれの委託者の開示できるものの、各委託者の守秘義務の遵守については各機関が責任を持つ必要があります。

3.5 Intellectual Property Rights relating to this Agreement obtained solely by a Party, without relying on the Confidential Information, shall be owned exclusively by that Party.

3.6 Unless otherwise agreed upon between the Parties in writing, the Research Results shall become the joint property of the Parties. Neither Party shall disclose the Research Results to any third party other than JST or [BBB consigner] without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

★「知的財産権」の帰属と開示について示しています。秘密情報に依拠せずに一方の当事者のみにより得られた成果に関する知的財産権は当該当事者に帰属しますが、共同で開発された研究成果の帰属は、両当事者が書面で別途合意しない限り共有となります。また、各当事者が JST および他の委託者以外の第三者に研究成果を開示するためには、他方当事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。

3.7 Unless otherwise agreed upon between the Parties in writing, the Intellectual Property Rights originating from the Research Results shall be jointly owned by the Parties in proportion to the respective contributions made by the Parties in the creation thereof. Any application for such Intellectual Property Rights, unless otherwise agreed upon by the Parties in writing, shall be jointly filed, prosecuted and maintained by the Parties 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 the Parties 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。

* 前項の成果についての知的財産権は当該当事者が単独で所有し、単独で申請できる旨を

明記することとしても差し支えありません。

- ＊ 当事者間で合意する場合は、持分比率と費用負担比率を異なることとしても差し支えありません。

- 3.8 AAA shall have a right to assign its share of ownership in the Research Results and the Intellectual Property Rights originated therefrom to JST, subject to JST's agreement to succeed to AAA's obligation to bear the costs and expenses relating to filing, prosecuting, maintaining, defending, and enforcing such Intellectual Property Rights.**

- ★日本側研究機関が、知財権を承継しない、もしくは放棄する場合には、特許維持費用を負担する前提で、研究機関から JST へ権利を譲渡することもできるため、その点を明示しています。なお、相手方研究機関が同様にその委託者へ譲渡することができるかどうかはここでは触れていません。

- 3.9 Notwithstanding Article 3.7, in the event that either Party does not intend to appropriately bear the costs and expenses relating to filing, prosecuting, maintaining, defending, and enforcing the Intellectual Property Rights originating from any Research Result in accordance with this Agreement, such Party shall waive its share of ownership in such Intellectual Property Rights.**

- ★一方の当事者が、本契約書に従い知的財産権の登録・維持等の費用を適切に負担しない場合には、その所有権を放棄しなければならない点を明示しています。

- 3.10 Neither Party 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 the other Party.**

- ★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。

- 3.11 Unless otherwise agreed upon by the Parties in writing, the Parties shall enter into the Joint Application Agreement prior to 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.**

- ★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。

- 3.12 Either Party may use the Research Results without any payment to the other Party solely for its own educational and research activities.**

- ★両当事者は、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。

- 3.13 The Parties acknowledge and agree that the Intellectual Property Rights originating from the Research Results are subject to governmental control under the Japanese law entitled “Industrial Technology Enhancement Act” (also known as Japanese Bayh-Dole system) and 35 USC §§200-212, and the Parties shall comply with those applicable laws and regulations.

★両当事者はそれぞれ国のバイ・ドール制度における義務条項をしなければならない旨定めています（米国の場合を例示）。

Article 4: Handling of Research Data

第4条：研究データの取扱い

- 4.1 The Parties agree that, from the perspective of ensuring reproducibility and verifiability of the Research Results, the data relating to the Research Results (the “Research Data”) may, in principle, be made publicly available. The details of the handling of the Research Data under this Agreement shall conform to the basic policies and related guidelines established by JST and the government of Japan (in particular, Ministry of Education, Culture, Sports, Science and Technology (MEXT)) concerning the handling and utilization of Research Results.
- 4.2 The Parties agree that any personal information contained in the Research Data shall be strictly anonymized in accordance with the Act on the Protection of Personal Information, and that such personal information shall be excluded from the scope of publication under Article 4.1.
- 4.3 The Parties agree that, if the Research Data contains any trade secret or export-controlled information, such information shall be clearly identified, segregated, and managed as Confidential Information, and that its disclosure may be restricted. The Parties further agree that the provision of personal information and Confidential Information to any third party outside Japan may be restricted.
- 4.4 If the Research Data contains any personal information or Confidential Information, the relevant Party shall clearly state the reason for non-disclosure in the data management plan (DMP) of the Research Project.

Article 5: PUBLICATION

第5条：研究成果の公表

5.1 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 either Party, subject to: (i) the compliance with the provisions of Articles 3.1 through 3.6; and (ii) securing the Parties' right to obtain Intellectual Property Rights for such Research Results.

★3.1 から 3.6 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研究成果を公表できるということを定めています。

5.2 Notwithstanding Article 5.1, either Party shall have a right to publish the Research Results if the other Party (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.

★5.1 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、〇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なない場合は、研究成果を公開できる取り扱いとしています。外国機関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 6: DISPUTE RESOLUTION

第 6 条：紛争の解決

6.1 Any issues that are not addressed or stipulated in this Agreement shall be agreed 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、両当事者は誠意をもって協議するものとします。

6.2 The Parties agree that in the event of any dispute arising out of or in connection with this Agreement (the "Dispute"), the Parties shall, in the first instance, resolve the Dispute by amicable negotiation in good faith upon either Party giving a written notice to the other Party (the "Negotiation Notice") to enter into such negotiation. If no agreement is reached between the Parties after such Negotiation Notice was made, the Dispute shall be referred to and finally resolved by arbitration in Tokyo, Japan (in the case where AAA is the respondent) or in [VENUE OF BBB] (in the case where BBB is the respondent). The language used will be that of the country in which the arbitration is being held. In each case the arbitration shall take place under the International Chamber of Commerce rules. A single translator will be allowed, if required, for either Party during arbitration.

The decision of the arbitration 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。

Article 7: LIABILITY

第7条：免責

Neither Party shall be liable to the other Party for any damages, including incidental, indirect, special or consequential damage of any kind whatsoever, suffered by the other Party due to any event arising from the Research Project.

★一方の当事者は、共同研究に起因して他方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 8: DURATION OF AGREEMENT

第8条：契約期間

8.1 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 written agreement by the Parties.

★契約期間を定めています。

8.2 Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party upon a material breach by the other Party of any of its obligations under this Agreement; provided, however, that such termination 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 6.2.

★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。

8.3 The provisions in Articles 3, 4, 5, 6, 7 and 10 shall remain in force after the expiration or termination of this Agreement.

★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 9: COMPLIANCE WITH LAWS AND REGULATIONS

第9条：法・規則の準拠

9.1 Each Party shall observe all applicable laws, regulations and treaties (including export

control laws and regulations, and 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。

9.2 Unless otherwise agreed by the Parties in writing, neither Party shall charge to the other Party for any transfer of genetic resources for the purpose of conducting the Research Project jointly under this Agreement, regardless of whether or not the countries in which the Parties reside respectively are members of the Convention of Biological Diversity.

★本契約において共同開発を実施するために生物遺伝資源を相手に移転する場合、課金しない旨を定めています。相手国が生物多様性条約に非加盟である米国であっても、本条項が適用されます。

【注意】

- ① 「生物遺伝資源等へのアクセス」が生じる可能性のない研究であっても、「取り決める必要が生じた際に、別途取り決める」などとしておくことが推奨されます。
- ② 各国の法律で「生物遺伝資源等へのアクセス」について定められている場合もあるため、予め下記で確認しておく必要があります。

<http://www.mabs.jp/index.html>

また、あわせて本合意文書の交渉にあわせて相手国研究機関と協議する必要もあります。相手国の国内法にて定められている場合は、本合意文書にて改めて規定する必要はありません。しかし、定められていない場合、相手国との協議の結果、細かい取り決め（フィールドの特定、対象の特定、その他）などを上記参考例に係わらず盛り込むことが推奨されます。

Article 10: MISCELLANEOUS

10.1 Neither Party shall be responsible in damages to the other for any failure or delay in performance of any of its obligations hereunder due to any war, earthquake, riot, fire, flood, explosion, pandemic or epidemic, 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 (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 (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 Party a 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。

- 10.2 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 Party of the change(s).

To AAA:

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

To BBB:

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

★連絡・通知方法です。

- 10.3 This Agreement shall not be assigned in whole or in part by any Party without the prior written consent of the other Party.

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

★本雛形では、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、第三国の法律を準拠法と定めることも可能ですが、「第三国」をどの国にするかは、弁護士相談も含め、日本に不利益とならないよう慎重に検討することが推奨されます。

- 10.5 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。

10.6 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 both 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。

IN WITNESS WHEREOF, each Party shall sign two identical copies of this Agreement for the execution hereof, and retain one copy.

Date: _____

Date _____

AAA:

BBB:

Name of Signer

Name of Signer