

Entrusted Research Agreement (Draft)

The University of Tokyo (the “**University**”) and XXXX (“**Partner**”; University and Partner being collectively referred to as the “**Parties**” and each individually a “**Party**”) enter into this Entrusted Research Agreement (this “**Agreement**”) on the terms and conditions defined in the **Terms and Conditions of Agreement** attached to this Agreement, to conduct the Entrusted research (the “**Entrusted Research**”) set out in the **Research Particulars** as follows.

Research Particulars

1. University:	The University of Tokyo			
2. Partner:				
3. Research Title:				
4. Research Purpose:				
5. Research Description:	(available detail Research Program description to be annexed)			
6. Participants of Research (Additional member list to be annexed)		Name	Organization • Title	Role in the Research
	Principal Investigator of University			
	Program Coordinator of University (If provided)			Overall program coordination (Setting up meetings, Managing schedules, Checking milestones) . Team Organization Chart to be annexed if applied.
7. Research Schedule: (the detail to be annexed.)	Milestones: Preliminary Report by the end of 1st Year (2008, XX,YYY) Secondary Report by the end of 2nd Year (2009, XX,YYY) Final Report at the end of research period (200x,xx,xx)			
8. Place for Performing Research				
9. Research Period:	From _____ through _____			
10. Payment for Research Expenses:	Research Costs (Article 7.1(1))	¥		
	Indirect Cost (Article 7.1(3))	¥		
	Grand Total	¥		
11. Provision of Facility and Equipment:		Facility Name	Equipment	
			Name	Standard Qty

	University				
	Provided Items by Partner				
12. Period for Duty of Confidentiality regarding Know-How:	Until 3 years passed from the day immediately following the Research Completion Date				
13. Period of general Duty of Confidentiality:	Until 3 years passed from the day immediately following the Research Completion Date				
14. Implementation Target Period:	Until 5 years passed from the day immediately following the day of the application in respect of the relevant Intellectual Property				

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives. The Parties have prepared two originals of this Agreement, and shall each retain one original.

Execution Date: _____, _____

Partner: _____

Signed by : _____
 Title : _____

University: The University of Tokyo
7-3-1 Hongo, Bunkyo-ku, Tokyo

Signed by : _____
 Title : _____

I, _____, named as Principal Investigator of the University, acknowledges the obligations in this Agreement.

_____ Signed by : _____

(The Terms and Conditions of Agreement are attached hereto)

Terms and Conditions of Agreement

1 Definition

For the purpose of this Agreement, the following terms are defined as follows:

- 1.1 **“Research Result(s)”** means any technical result acquired based on the Entrusted Research, including, but not limited to, any invention, idea, design, copyrightable work and know-how which is identified as the result in the achievement report, which shall be prepared pursuant to Article 6 and relate to the purpose of the Entrusted Research.
- 1.2 **“Intellectual Property Rights”** means any and all world-wide intellectual property rights, including, but not limited to, patent right, utility model right, design right, copyright, trademark right, know-how and the rights to obtain these rights.
- 1.3 **“Invention(s)”** includes any invention, idea, device, design, works of authorship, mark, know-how, and any other proprietary information, which are subject to the protection of Intellectual Property Rights..
- 1.4 **“Application(s)”** means an application for a patent right, utility model right, trademark right or design right, a request for the registration of a circuit layout right, an application for the registration of a variety of a plant breeder’s right, and a request, registration and/or application (including provisional application) of any right in any foreign jurisdiction that is the same as or equivalent to any of the foregoing.
- 1.5 **“Partner Designated Third Party”** means any entity to whom Partner commits production on manufacturing in a license agreement, a joint application agreement or otherwise, through discussion between the University and Partner.
- 1.6 **“Research Coordinator”** means a person of the University who has the right to coordinate the Research, including but not limited to, managing daily works and schedules of the Entrusted Research, and arranging meeting for confirming the progress of the Entrusted Research.

2 Mutual Cooperation in Entrusted Research

Subject to the terms and conditions of this Agreement, the University shall conduct the Entrusted Research with assistance of the Research Coordinator.

3 Research Period

The research period of the Entrusted Research shall be as set forth in Paragraph 9 of the Research Particulars.

4 Researcher

- 4.1 The University shall assign Principle investigator set forth in Paragraph 6 of the Research Particulars who will manage the total progress of the research as their researcher to participate in the Entrusted Research.
- 4.2 The University may change, add or remove the researcher set forth in Article 4.1 above, with the prior consent of Partner.

5 Research Collaborator

- 5.1 If University needs to obtain the participation of any person other than the listed researcher for the purpose of the conduct of the Entrusted Research, that University may, upon obtaining the prior consent of Partner, allow any person of the University other than the listed researcher, including a student, to act as a research collaborator.

6 Completion of Entrusted Research and Preparation of Final report

- 6.1 The Entrusted Research shall be deemed to have been completed upon the occurrence of any event described below. The day when the Entrusted Research is deemed to have been completed shall be referred to as the “**Research Completion Date**”.

- (1) When both Parties agree that the Research Purpose set forth in Paragraph 4 of the Research Particulars has been achieved or realized;
- (2) When the University or Partner determines that it is impossible or otherwise significantly difficult to achieve or realize the Research Purpose set forth in Paragraph 4 of the Research Particulars, and both Parties agree with such determination;
- (3) When the Research Period set forth in Paragraph 9 of the Research Particulars expires.

6.2 Achievement Report

Within thirty (30) days after the Research Completion Date, the University shall make the achievement report with respect to any Research Result which has been obtained during the Research Period of the Entrusted Research.

6.3 Intermediate Report

A Intermediate report shall be prepared for the checking the progressing of the Entrusted Research, at least every end of the year of the Research Period.

7 Allocation of Research Expenses

- 7.1 Partner shall bear the following research expenses, which shall be required for the conduct of the Entrusted Research. The payment amount shall be as set forth in Paragraph 10 of the Research Particulars.

- (1) The expenses directly required for the conduct of the Entrusted Research, including, but not limited to, honoraria, travel expenses, facilities expenses, expendable items expenses, and light, fuel and water expenses (other than ordinary expenses required for the maintenance and management of University’s facilities and equipment), as well as the research support expenses which shall be determined pursuant to the applicable provision of the University's rules, plus the amount of any consumption tax and local consumption tax under Japanese tax laws and regulations which shall be assessed on the foregoing (collectively, the “**Research Costs**”).
- (2) The expenses required for ordinary the maintenance and management of the University’s facilities and equipments (the “**Indirect Cost**”).

8 Payment of Research Expenses

- 8.1 Partner shall pay the Research Expenses set forth in Paragraph 10 of the Research Particulars by the due date of payment prescribed by the University in accordance with the applicable invoice issued by the University.

- 8.2 If Partner fails to pay the Research Expenses by the due date of payment in accordance with Article 8.1, the University shall be entitled to charge Partner delay charges at the rate of five percent (5%) per annum for the unpaid outstanding amount on a daily pro-rata basis covering the period from and including the day immediately following the due date for payment up to and including the day of actual payment. Upon request from the University, Partner shall pay such charges.

9 Ownership of Facilities, etc. Acquired by Research Expenses

Any and all facilities, equipment, supplies, etc. that are acquired using the Research Expenses set forth in Paragraph 10 of the Research Particulars shall be owned by the University.

10 Provision of Facilities and Equipment

- 10.1 The University and Partner shall make available to the Entrusted Research their own facilities and equipment set forth in Paragraph 11 of the Research Particulars.
- 10.2 The University may accept from Partner free of charge, and shall use, the equipment owned by Partner which is set forth in Paragraph 11 of the Agreement Particulars, with the consent of Partner, in order to make the same available for the use for the Entrusted Research. In this case, the ownership of such equipment may be transferred to the University free of charge upon agreement between the University and Partner. The University shall retain custody of such equipment accepted from Partner with the duty of care of a good manager, from the time of completion of the installation of that equipment until the transfer of the ownership or commencement of the return of that equipment.
- 10.3 Any expenses required for the carrying-in, installation, removal and carrying-out of the equipment provided in Article 10.2 shall be borne by Partner.

11 Discontinuation of Research or Extension of Period

If there arises any contingency that was not foreseen at the outset of the Entrusted Research, including acts of God or any other force majeure, or any delay in the Entrusted Research caused by unavoidable circumstance, the Entrusted Research may be discontinued or the Research Period may be extended through discussion between the Parties. In such case, neither the University nor the Partner shall be liable for any damages, losses, liability, etc. which are incurred on the part of the other Party in conjunction with the discontinuation or extension of the Entrusted Research.

12 Treatment of Research Expenses, etc. at Completion of Research

- 12.1 If it becomes likely that, as a result of the extension of the Research Period of the Entrusted Research under Article 11, there would be a shortage in funds for the Research Expenses already received, the University shall immediately notify Partner in writing. In such case, Partner shall determine whether or not it will bear the shortage in the Research Expenses through discussion with the University.
- 12.2 If the Entrusted Research is discontinued in accordance with Article 11 or by the termination of this Agreement, where there is any unused surplus in the Research Costs paid pursuant to Article 8.1 above, Partner may demand the University to refund the amount of such surplus. Upon demand from Partner for the refund, the University shall accommodate the payment of such refund.
- 12.3 When the University has completed the Entrusted Research, the University shall return to Partner any equipment accepted from Partner pursuant to Article 10.1 with respect to which

the ownership thereof has not been transferred to the University. Such equipment shall be returned in the state that it was in as of the Research Completion Date.

13 Notice of Inventions

- 13.1 If any researcher or research collaborator of University (collectively, a “**Researcher**”) has conceived any Invention as a result of the Entrusted Research, the University shall promptly notify Partner.

14 Intellectual Property

- 14.1 TITLE TO INVENTIONS. All Intellectual Property Rights for an Invention conceived as a result of the Entrusted Research shall be solely owned by the University.

- 14.2 APPLICATION FOR INVENTIONS. The University shall notify the Partner promptly after having made the Invention, and may file an Application at its own discretion for such Invention. If the Partner elect its license option for any foreign countries as described in Article 14.3 (A) and (B), the Partner shall notify the University and the University will file an Application in such countries.

- 14.3 LICENSING OPTION. In the event that the Application for the Invention is filed, the Partner has the exclusive option to elect the following licenses by notifying in writing to the University within the Option Period. The University and Partner shall enter into the license agreement after the discussion of the commercially reasonable terms and conditions within three (3) month after exercise of the option.

A. a non-exclusive, non-transferable, royalty-bearing license without the right to sub-license (in a designated field of implementation) the Partner to implement the Intellectual Property Rights for the Invention in Japan and/or any foreign countries elected by the Partner, provided that the Partner agrees to (i) demonstrate reasonable efforts to commercialize the Invention in the public interest and (ii) pay all prosecution and maintenance costs in all countries, including Japan, in which the Partner is granted a non-exclusive license right under this paragraph; or

B. an exclusive, non-transferable, royalty-bearing license with the right to sub-license (in a designated field of implementation) the Partner to implement the Intellectual Property Rights for the Invention in Japan and/or any foreign countries elected by the Partner; provided that the Partner agrees to (i) demonstrate reasonable efforts to commercialize the Invention in the public interest and (ii) pay all prosecution and maintenance costs in all countries, including Japan, in which the Partner is granted an exclusive license right under this paragraph .

15 Option Period

- 15.1 The Option Period shall be up to eighteen (18) months from the filing date of the Application, and shall be determined in a joint application agreement or other agreement in writing between the Parties.

- 15.2 If Partner wishes to extend the Option Period during the first Option Period, Partner shall request an extension from the University, and upon obtaining the University’s consent, may extend the Option Period in writing.

- 15.3 If Partner intends to use and gain a profit from the Intellectual Property Rights during the Option Period, Partner shall consult with the University in advance regarding such treatment.

16 Basic Understanding in Implementation of Research Result

With respect to the treatment of the Research Result including the Inventions, the University and Partner shall discuss and/or negotiate, giving consideration to the following facts and requirements:

- (1) that Intellectual Property Rights were acquired as a result of the Entrusted Research;
- (2) that one of the University's obligations is to use its Research Result for society in general;
- (3) that the University has no plan to commercialize or exploit the Intellectual Property Rights by itself;
- (4) that the Intellectual Property Rights comes from the Research Result which was acquired as a result of the disbursement of labor costs for the Researchers in addition to the Research Expenses provided in Article 7, or as a result of the use of their respective facilities and/or equipment; and
- (5) that if any revenue is raised from the Intellectual Property Rights, University shall have the obligation to pay "**Reasonable Consideration**" as defined in Article 35 of the Japanese Patent Law to the Researcher of the University who conceived the Invention relating to such Intellectual Property Rights, in accordance with respective rules and other procedures.

17 Implementation by University

Subject to the compliance with the duties of confidentiality under Articles 24 and 28, the University may use the Research Result free of charge in its educational and research activities.

18 Grant of License to Third Parties

- 18.1 If, notwithstanding the fact that Partner or Partner Designated Third Party entered into an exclusive license agreement with the University relating to the Intellectual Property Rights as a result of the exercise of the option by the Partner pursuant to Article 14.3(B) such party fails to implement such Intellectual Property Rights without a legitimate reason after the expiration of the period commencing from and including the day immediately following the day of the Application of the relevant Intellectual Property Rights set forth in Paragraph 14 of the Research Particulars (the "**Implementation Target Period**"), the University may, after hearing the request of Partner or any Partner Designated Third Party, terminate the exclusive license agreement entered into with Partner or any Partner Designated Third Party, and grant a license of such Intellectual Property Rights to any third party (other than Partner or any Partner Designated Third Party) (the "**University Designated Third Party**"); provided, however, that the different period from the Implementation Target Period may be set up in the exclusive license agreement.
- 18.2 Even where the University has granted a license to Partner or any Partner Designated Third Party as a result of the exercise of the option by the Partner pursuant to Article 14.3, if it is found that the grant of such license significantly damages the public interest, the University may discuss with Partner after giving written notice to Partner. If the relevant situation does not change regardless of such discussion, the University may, terminate the license to Partner or any Partner Designated Third Party, and grant a license of such Intellectual Property Rights to any University Designated Third Party.

19 Royalties

- 19.1 When Partner or any Partner Designated Third Party intends to implement the Intellectual

Property Rights, Partner shall pay, or cause such Partner Designated Third Party to pay, to the University a royalty, which shall be defined in the applicable license agreement.

20 Identification of Know-How

- 20.1 If either Party desires to keep confidential any proprietary information which was created as a result of the Entrusted Research, the University and Partner shall promptly discuss and identify the same in writing.
- 20.2 If both Parties agree to keep such proprietary information confidential (the “Know-How”), then the Know-How shall not be disclosed or leaked to any third party without prior written consent of the other Party. The confidentiality period for the Know-How is starting from the day of identification of such Know-How to the end of the period set forth in Paragraph 12 of the Research Particulars. Provided, however, that during the discussion to identify the Know-How, the period may be changed from the period set forth in Paragraph 12 of the Research Particulars. Also, if it is necessary after the identification of the Know-How, the University and Partner may discuss and extend or shorten the period of confidentiality.

21 Treatment of Programs, Know-How

Any copyrightable programs or Know-How created as a result of the Entrusted Research shall be treated in the same manner as set forth in Articles 14 through 20, and the Parties shall discuss and determine how to treat such programs and Know-how, taking into account the basic understanding regarding the implementation of the Research Result as set forth in Article 16.

22 Provision of Information

- 22.1 University shall disclose at its discretion to the Partner any information, document and material which is necessary for the conduct of the Entrusted Research, except those in respect of which any obligation of confidentiality is owed under a separate contract with a third party other than the University or Partner.
- 22.2 Partner shall not use the material provided under Article 22.1 for any other purpose than purpose of this Agreement or Entrusted Research without written consent of University. Further, Each Party may enter into the separate agreement through discussion if Partner desire to treat the material in a special way.
- 22.3 Partner shall promptly return to University after the Research Completion Date any document and material that was provided on the condition that it shall be so returned.

23 Authorized Technology Licensing Organizations

The University may entrust some of the tasks as set forth in Articles 14 through 22 to an authorized technology licensing organization (“**Authorized TLO**”, an organization authorized under the Law Promoting Technology Transfer from Universities to Industry (Law No. 52 of 2004), and in this agreement refers to Toudai TLO Ltd. or the Foundation for the Promotion of Industrial Science). The University shall ensure that the Authorized TLO complies with the University’s obligations under this Agreement.

24 Confidentiality

- 24.1 Partner shall not disclose or leak to any third party other than any person of Partner who needs to know information in order to conduct and manage the Entrusted Research any information provided or disclosed by University during the Entrusted Research which is

marked as confidential at the time of the submission or disclosure from University, or which is disclosed orally with a statement upon such disclosure that it is confidential and University notifies Partner in writing within 30 days after the disclosure that such information is confidential (collectively the “**Confidential Information**”). Further, the Partner shall cause the Recipient of Confidential Information hold such Confidential Information in confidence even after he/she changes its work position; provided, however, that the above provisions shall not apply to any information which, it can be demonstrated:

- (1) was already possessed by the recipient at the time of the provision or disclosure;
 - (2) was already part of the public domain at the time of the provision or disclosure;
 - (3) becomes a part of the public domain after the provision or disclosure without fault of the recipient;
 - (4) was lawfully acquired from a third party who has the legitimate right to that information;
 - (5) was independently developed and/or acquired by the recipient without reference to the Confidential Information disclosed by the other Party; or
 - (6) is covered by a prior written consent by the other Party for the disclosure.
- 24.2 If Partner is required by a competent court or administrative institution to disclose any Confidential Information (other than those specified in the proviso of Article 24.1 above) under any law or regulation, it may disclose such information to such court or administrative institution; provided, however, that:
- (1) it shall advise the University of the content prior to the disclosure;
 - (2) it shall make the disclosure only to the extent of such portion which is the subject of a lawful order to disclose;
 - (3) it shall expressly state in writing, upon disclosure, that such information is confidential; and,
 - (4) it shall, in accordance with laws and regulations, take necessary steps to protect such information through the discussion with the University, if possible.
- 24.3 Partner shall not, without the prior written consent of the other Party, use the Confidential Information (other than those specified in the proviso of Article 27.1 above) for any purpose other than for the Entrusted Research and this Agreement.
- 24.4 Articles 24.1 through 24.3 shall survive the Research Completion Date for the period set forth in Paragraph 13 of the Research Particulars first written above. Provided, however, that such period may be extended or shortened upon discussion between the Parties.

25 Public Release of Research Result

- 25.1 The Research Result shall, in principle, be publicly released in the light of social mission of the University. The University may disclose, announce or publicly release the Research Result (or where the Research Period continues for more than one year, the Research Result acquired in the relevant fiscal year) with a written notice to Partner stating the contents of such release no later than 30 days prior to the scheduled day of the Public Release of Research Result. Further, University may clearly indicate that the Research Result is the result of the Entrusted Research after obtaining the prior written consent of Partner.
- 25.2 Partner may disclose, announce or publicly release the Research Result only after it was released by the University pursuant to Article 25.1. If Partner desires to release the Research Results, it shall notify the University in writing of the contents of such release no later than 30 days prior to the scheduled day of the such release.

26 Termination of Agreement

26.1 If any of the following events occurs, either Party may within fourteen (14) days demand in writing that the other Party remedy the situation within a reasonable remedial period, and may immediately terminate this Agreement in the event that such situation is not remedied within such period:

- (1) When the other Party has committed any improper or unjust act; or
- (2) When the other Party has breached any provision of this Agreement.

27 No Representation and Warranty

THE UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE RESEARCH OR ANY INTELLECTUAL PROPERTY RIGHTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHTS OR CLAIMS, WHETHER ISSUED OR PENDING, AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

IN NO EVENT SHALL THE UNIVERSITY, ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS AND AFFILIATES, BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING ACTUAL, ORDINARY, INCIDENTAL, CONSEQUENTIAL, ECONOMIC DAMAGES OR INJURY TO PERSONS OR PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER THE UNIVERSITY SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING. THIS ARTICLE 29 SHALL SURVIVE THE EXPIRATION OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

28 Term of Agreement

28.1 The term of this Agreement shall be coterminous with the Research Period of the Entrusted Research.

28.2 The provisions of Article 6.2, Article 10 (excluding Article 10.1), Articles 12 (excluding Article 12.1) through 25 (excluding Article 22.1), Article 27, Article 28.2 and Article 33 shall survive after the expiration of this Agreement for the period provided in each of such provisions or until all the respective subject matters therein have expired.

29. Notice

29.1 All notices required or permitted to be given under this Agreement shall be in writing, and shall be given by an e-mail or facsimile or prepaid registered airmail letter to the addresses shown below or to such other addresses as the Parties may designate in writing. Notices given by telex or facsimile shall deem to have been received on the day following its dispatch and notice given by registered airmail shall deem to have been received thirty (30) business days after mailing.

The University:

[to be provided]

The Partner:

[to be provided]

30 Use of Name

Neither party will use the name of the other in any advertising or other form of publicity without permission of the other. As an example for the University, the Partner shall not use the same of “University of Tokyo” or any variation, adaptation or abbreviation thereof, or that of any of its trustees, officers, faculty, students, employees or agents, or any trademark owned by the University.

31 Force Majeure

Neither party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment, or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage or any cause beyond its reasonable control.

32 Discussion

If it is necessary to provide for any matter that is not expressly set forth in this Agreement, the determination shall be made through discussion between the Parties.

33 Governing Law and Jurisdiction

33.1 This Agreement shall be governed by laws of Japan.

33.2 All disputes relating to this Agreement shall be submitted to the exclusive jurisdiction of the Tokyo District Court (Head Office) as the court of the first instance.

34 Export Controls/Economic Sanctions

34.1 The Partner agrees to comply with applicable export controls and economic sanctions laws and regulations. Further, the Partner remains solely responsible for complying with such laws and regulations in all instances, including obtaining all necessary export authorizations and licenses.

34.2 Before the Partner supply, or otherwise make available, to the University any materials, Partner shall give written notice, as early as practicable, to the University of all applicable government restrictions or prohibitions on use, export, release, including those restrictions or prohibitions that apply to the University employees and contractors, or transfer of such items, including, without limitation, the application of munitions export controls regulations or any other government security regulations.

(End of the Agreement)