

Commissioned Research Agreement (draft)

Hirosaki University (hereinafter referred to as “Party A”) and ○○○○ (hereinafter referred to as “Party B”) shall conduct the commissioned research (hereinafter referred to as “this commissioned research”) described in the table below pursuant to the following provisions of the commissioned research agreement (hereinafter referred to as “this Agreement”).

(Contract item table)

1. Research subject				
2. Purpose and description of research				
3. Research period	Date of payment of expenses - DD/MM/YYYY			
4. Researchers	Classification	Name	Department / title	Role in this research
	Party A			(Principal researchers)
5. Research site	Party A			
6. Equipment used at the facilities of Party A and equipment of Party B to be brought to Party A	Classification	Name	Specification	Quantity
	Party A			
	Party B			
7. Expenses required for research	Classification	Direct expense	Indirect expense	Total
	Party B	_____ yen (Including consumption tax and local consumption tax of _____ yen)	_____ yen (Including consumption tax and local consumption tax of _____ yen)	_____ yen (Including consumption tax and local consumption tax of _____ yen)
8. Term for payment of expenses	Within ○○ days from the day following the day on which the invoice is issued by the treasurer of Hirosaki University			
9. Deadline for submission of research results report	Within ○○ days from the day following the day on which this commissioned research is completed			

10. Nondisclosure period of know-how	For ○ years from the day following the period of this Agreement and the end of research date
11. Effective period of duty of confidentiality	For ○ years from the day following the period of this Agreement and the end of research date
12. Notification period for presentation of research results	For ○ years from the day following the period of this Agreement and the end of research date
13. Special instructions	

(Definitions)

Article 1. The following terms used in this Agreement shall be defined as follows:

1-1. “Research results” refer to technical outcomes obtained based on this Agreement including inventions, ideas, designs, works, and know-how in relation to the purpose of this commissioned research and established as results in the performance report.

1-2. “Intellectual property rights” include:

A. Patent rights defined in the Patent Act (Act No. 121 of 1959), utility model rights defined in the Utility Model Act (Act No.123 of 1959), design rights defined in the Design Act (Act No. 125 of 1959), trademark rights defined in the Trademark Act (Act No. 127 of 1959), layout-design exploitation rights defined in the Act on the Circuit Layout of a Semiconductor Integrated Circuits (Act No. 43 of 1985), breeder’s rights defined in the Plant Variety Protection and Seed Act (Act No. 83 of 1998) and rights equivalent to the above rights in foreign countries

B. The right to obtain a patent specified in the Patent Act, the right to registration of a utility model specified in the Utility Model Act, the right to registration of a design specified in the Design Act, the right to registration of a trademark specified in the Trademark Act, the right to registration of the establishment of a layout-design exploitation right specified in Paragraph 1 of Article 3 of the Act on the Circuit Layout of a Semiconductor Integrated Circuits, the right to registration of a breed specified in Article 3 of the Plant Variety Protection and Seed Act, and rights equivalent to the above rights in foreign countries

C. The copyrights to the works of the programs and databases (hereinafter referred to as “programs etc.”) defined in the Copyright Act (Act No. 48 of 1970) and rights equivalent to the above rights in foreign countries

D. The privileged technical information of proprietary value specified after discussion between the two parties (hereinafter referred to as “know-how”)

2. In this Agreement, “inventions etc.” refers to the inventions subject to patent rights, the ideas subject to utility model rights, the creations subject to design rights, trademark rights,

layout-design exploitation rights, and the works including the programs etc., things that are grown subject to breeder's rights, and the devices subject to know-how.

3. In this Agreement, the "exercise" of intellectual property rights refers to the actions specified in Paragraph 3 of Article 2 of the Patent Act, the actions specified in Paragraph 3 of Article 2 of the Utility Model Act, the actions specified in Paragraph 3 of Article 2 of the Design Act, the actions specified in Paragraph 3 of Article 2 of the Trademark Act, actions to specified in Paragraph 3 of Article 2 of the Act on the Circuit Layout of a Semiconductor Integrated Circuits, actions specified in Paragraph 5 of Article 2 of the Plant Variety Protection and Seed Act, and the actions and use of know-how specified in Items 15 and 19 of Paragraph 1 of Article 2 of the Copyright Act.

4. The term "exclusive license etc." used in this Agreement includes:

4-1. The exclusive license specified in the Patent Act, the exclusive license specified in the Utility Model Act, the exclusive license specified in the Design Act, and the exclusive license specified in the Trademark Act

4-2. The exclusive license specified in the Act Concerning the Circuit Layout of Semiconductor Integrated Circuits

4-3. The exclusive license specified in the Plant Variety Protection and Seed Act

4-4. The right to exercise exclusive rights to the items subject to the rights specified in B of Item 2 of Paragraph 1

4-5. The right to exercise exclusive rights to copyrighted works including programs etc.

4-6. The right to exercise exclusive rights to know-how related to the rights specified in D of Item 2 of Paragraph 1

5. In this Agreement, "researchers" refers to those listed in Section 4 of the contract item table above who belong to either Party A engaged in this commissioned research as well as those who fall under Paragraph 2 of Article 4 of this Agreement. "Research collaborators" refers to those listed in Section 4 of the contract item table as well as those not described in Paragraph 2 of Article 4 of this Agreement who collaborate with this commissioned research.

*The parties hereto may add or remove definitions of terms in this Agreement as required.

*Research results may include new research materials (substances, cell lines, experimental animals, etc.) deriving from the research, and intellectual property rights may include rights to these.

*The definition of research collaborators may be defined in more detail to clarify their legal character.

(Report of research results)

Article 2. Party A shall submit a report on the research results to Party B by the submission deadline described in Section 9 of the contract item table.

(Example of the content of report of research results)

- (1) Research subject
- (2) Summary of research results
- (3) Use of research results in the future
- (4) Actual expenses required for research
- (5) Intellectual property as a research result

*The items of the report listed in the dotted frame are merely examples. The report shall include the information agreed upon with the other party.

(Definition of know-how)

Article 3. Party A and Party B shall promptly discuss with each other and specify the research results described in the report to be considered as know-how.

2. In specifying know-how, Party A and Party B shall discuss with each other, agree on, and present the period for which know-how is kept undisclosed, and the period shall be as described in Section 10 of the contract item table in principle. However, the period may be extended or reduced after discussion between the two parties if necessary.

(Conduct of research)

Article 4. Party A shall carry out this commissioned research on its own responsibility and shall not claim compensation against Party B for damages incurred in its process. Provided, however, that Party B shall compensate Party A for damage caused by defective goods provided by Party B.

2. Party A shall notify the other party in writing in advance of its intention to have a member of Party A participate in this commissioned research as a researcher.

*When participation of a researcher does not cause a change in the contract value, a notification of said participation may be made in place of the conclusion of the modified agreement after consultation with the other party.

(Recommission)

Article 5. Party A shall not transfer the rights and obligations under this agreement including recommission of the commissioned research to a third party without a prior written consent of Party B.

(Payment of research expenses)

Article 6. Party B shall pay Party A the amount specified in the invoice issued by the treasurer of Hirosaki University for the expenses required for the research (hereinafter referred to as “the research expenses”) listed in Section 7 of the contract item table by the deadline for payment specified in Section 8 of the contract item table.

2. If Party B fails to pay the research expenses described in the preceding paragraph by the established deadline for payment, the party shall pay the overdue interest calculated at a rate of five per cent per annum based on the number of days that have passed since the day following the due date for the payment.

*The payment of the research expenses may be accepted in installments. In this case, Section 8 of the contract item table shall indicate, for example, “○○○ yen by DD/MM and ○○○ yen by DD/MM as established in the invoice issued by the treasurer of Hirosaki University”.

(Accounting)

Article 7. Party A shall manage the research expenses described in the preceding article.

However, Party B may request Party A to disclose the accounting documents related to this Agreement. Party A shall grant Party B's request for disclosure.

(Attribution of equipment etc. acquired with the research expenses)

Article 8. The equipment etc. acquired with the research expenses listed in Section 7 of the contract item table shall belong to Party A.

* If requested by Party B, Party A may discuss with Party B and establish regulations on the handling of the equipment etc. acquired with the research expenses provided by Party A (e.g. prohibition on the disposition or use of such equipment for purposes other than the research, or transfer to Party B after the end of the research period) within the limits permitted by laws and regulations. The equipment etc. which Party B wishes to recover shall be acquired by Party B and loaned to Party A without charge to facilitate its return. It is desirable to establish the regulations on the handling of equipment at the same time as this Agreement.

(Emplacement etc. of provided goods)

Article 9. The expenses required for emplacement and installation of provided goods listed in Section 6 of the contract item table shall be borne by Party B.

2. Party A shall store the goods listed in Section 6 of the contract item table provided by Party B with a competent manager under a duty of care to such goods from the completion of its installation to the beginning of the returning process.

(Cessation of commissioned research or extension of research period)

Article 10. In the case of natural disasters and other unavoidable circumstances, Party A and Party B may discontinue this commissioned research or extend the research period. In such cases, neither Party A nor Party B shall be liable.

(Return of provided goods)

Article 11. When this commissioned research is completed, or if discontinued, Party A shall return the goods listed in Section 6 of the contract item table provided by Party B as they are at the time of completion or cessation of the research. In such cases, the expenses required for removal and dismantlement shall be borne by Party B.

(Return of research expenses)

Article 11. When this commissioned research is completed, or discontinued, or extended under the provisions of Article 10, Party B may claim against Party A the disused part of the research expenses paid under the provisions of Paragraph 1 of Article 6.

Party A shall grant Party B's claim for return of the disused part of the expenses.

(In case of insufficient research expenses)

Article 13. If there is a risk that the expenses paid for the research may be insufficient, Party A shall promptly notify Party B of this in writing providing its cause. Party B shall discuss with Party A and determine whether to bear the additional expenses required for the research.

*If Party B is unable to bear the expenses, the continuation of the contract shall be discussed and

determined by the two parties.

(Ownership etc. of intellectual property rights)

Article 14. In principle, the intellectual property rights deriving from this commissioned research belong to the University. However, if the consignor provides opinions and advice resulting in intellectual property etc. in the course of the research, the equity of such rights shall be determined based on mutual agreement according to the level of contribution.

(Transfer of equity etc.)

Article 15. Party A may transfer its intellectual property rights deriving from this commissioned research for which the right to obtain a patent has been inherited from Party A under the provisions of the preceding article or its equity of the intellectual property rights shared with Party B under the provisory clauses of the preceding article, or grant the exclusive license to exercise such rights to Party B (or an entity designated by Party A and Party B after discussion) under a transfer contract or an exclusive license agreement.

2. Party A shall obtain written consent from Party B prior to the transfer of equity of shared patent rights and the license to exercise such rights to Party B (or an entity designated by Party A and Party B after discussion).

*An entity designated by Party A and Party B after discussion refers to an institution closely related to the University such as a technology licensing organization, which will naturally be familiar with the inventions produced by research as a result of its collaboration in the research under Article 22.

*If “an entity designated by Party A and Party B after discussion” is added in Paragraph 1, the part in parentheses in Paragraph 2 shall also be added.

*Regulations shall be separately established with Party B in relation to entities designated by Party A and Party B after discussion.

(Preferential exercise of rights)

Article 16. Party A shall not exercise the intellectual property rights to the inventions etc. produced as a result of this commissioned research inherited by Party A under Article 14 (excluding copyrights, know-how, and those prescribed in Paragraph 2 of this article; hereinafter referred to as “intellectual property rights inherited by Party A”) unless in the cases specified in the following article. Party A shall also grant Party B or an entity designated by Party B preferential right to be exercised for ○ years counting from the application for the intellectual property rights if requested by them.

*The period of preferential exercise of rights shall be a period agreed on by Party A and Party B without exceeding 10 years (the same shall apply hereinafter).

2. Party A shall not exercise the intellectual property rights shared under the provisory clauses of Article 14 (excluding copyrights and know-how; hereinafter referred to as “shared intellectual property rights”) unless in the cases specified in the following article. Party A shall also grant entities designated by Party B preferential right to be exercised for ○ years counting from the application for the intellectual property rights if requested by them.

3. Party A shall renew the period of preferential exercise of rights set forth in the preceding two

paragraphs (hereinafter referred to as “the preferential exercise period”) if requested by Party B or an entity designated by Party B. In such cases, the period to be renewed shall be determined through discussion between Party A and Party B.

*Party B or an entity designated by Party B may be granted an exclusive license if requested by them and judged not to pose a problem. In such cases, the period shall be determined in accordance with preferential exercise of rights.

(Granting of the license to exercise rights to third parties)

Article 17. When Party B or an entity designated by Party B does not exercise the intellectual property rights inherited by Party A without reasonable grounds from the ○ year onwards during the preferential exercise period set forth in Paragraphs 1 and 3 of the preceding Article, the right to exercise the intellectual property rights may be granted to an entity other than Party B or the entity designated by Party B (hereinafter referred to as "third party") based on the opinion of Party B or the entity designated by Party B.

2. The provisions of the preceding paragraph shall apply mutatis mutandis to cases where Party B does not exercise shared intellectual property rights within ○ years calculated from the day following the completion of this commissioned research without reasonable grounds, or where an entity designated by Party B does not exercise shared intellectual property rights without reasonable grounds from the ○ year onwards during the preferential exercise period set forth in Paragraphs 2 and 3 of the preceding Article.

3. Party B shall be able to permit a third party to exercise shared intellectual property rights upon filing an application etc. for the intellectual property rights. In this case, Party A shall not exercise or grant a third party a license to exercise the intellectual property rights inherited by Party A or the intellectual property rights shared with Party B except in the cases specified in the preceding two paragraphs.

4. When Party B, to whom an exclusive license to exercise intellectual property rights has been granted by Party A, does not exercise such rights without reasonable grounds, Party B shall pay Party A a reasonable remuneration or return the exclusive license. If the exclusive license is returned, Party A may grant a license to a third party.

*If an exclusive license is granted under Article 16, the preferential exercise shall be replaced by the exclusive license.

(Exercise fee)

Article 18. Party B or an entity designated by Party B shall pay Party A the exercise fee specified in the license agreement to exercise the intellectual property rights inherited by Party A.

2. Party B or an entity designated by Party B shall pay Party A the exercise fee specified in the license agreement to exercise the intellectual property rights shared between Party A and Party B as Party A does not exercise such rights.

3. If the license to exercise an intellectual property right shared between Party A and Party B is granted to a third party, the exercise fee shall be allocated to Party A and Party B according to their equity of the intellectual property right.

*In cases where there is a possibility that new research materials may be derived from this commissioned research, their handling may need to be specified in Articles 14-18.

(Disclosure of information)

Article 19. Party B shall disclose the information, knowledge, etc. possessed by Party B to Party A in relation to this commissioned research to the extent necessary for Party A to conduct this commissioned research.

(Confidentiality)

Article 20. In conducting of this commissioned research, neither Party A nor Party B shall disclose or divulge any technical or commercial information disclosed or made available by the other party to any person other than the researchers listed in Section 4 of the contract item table. Party A and Party B shall impose the duty to maintain the confidentiality of the information disclosed by the other party on the relevant researchers including after they leave their position. Provided, however, that this does not apply to information that falls under any of the following:

- 1-1. Information for which it is possible to prove that it was already possessed by the person when it was disclosed or provided
- 1-2. Information that is already publicly known when it is disclosed or obtained
- 1-3. Information that has become publicly known after being disclosed or provided due to grounds not attributable to the person who has obtained the information
- 1-4. Information for which it is possible to prove that it was obtained legally from a third party with legitimate authority
- 1-5. Information for which it is possible to prove that it was developed and acquired without the information disclosed by the other party
- 1-6. Information for which prior consent for disclosure is obtained from the other party
2. Party A shall not use any technical or commercial information disclosed or made available by the other party for any purpose other than for this commissioned research. Provided, however, that this shall not apply to the cases where the prior written consent of the other party is obtained.
3. The effective period specified in the preceding two paragraphs shall be the period set forth in Section 11 of the contract item table. However, this period may be extended or reduced upon discussion between Party A and Party B.

*In cases where Party A or Party B needs to disclose information to a person required to have access to the information for purposes such as reporting other than researchers, the person to whom the information is disclosed (their position etc.), the scope of disclosure, and other relevant matters shall be discussed with the other party and agreed upon in writing based on Item 4 of Paragraph 1.

*The effective period may be established for around three to five years.

(Publication of the research results)

Article 21. Party A and Party B may in principle disclose, present, or publish the research results obtained in the course of this commissioned research (the research results obtained in the current year if the research period spans multiple years) (hereinafter referred to as “publication

etc. of research results”) in compliance with the duty of confidentiality prescribed in Article 20 after filing applications for intellectual property rights etc. and obtaining consent from the other party.

2. In the case of the preceding paragraph, Party A or Party B (hereinafter referred to as "the party interested in publication") shall notify the other party in writing of the content of publication no later than 00 days before the date of publication of research results. The party interested in publication may, upon obtaining prior written consent, indicate that the content to be published were obtained as a result of this commissioned research.
3. If the content of the notification specified in the preceding paragraph is judged to suggest that the publication etc. of research results may be prejudicial to the anticipated future interests, the notified party shall notify in writing the party interested in publication of the modification of the technical information to be presented or published within 00 days from the reception of the notification. The party interested in publication shall not publish the part of the research results that may be prejudicial to the anticipated future interests without the consent of the other party. However, the other party must not refuse to give such consent without reasonable grounds.

*In the case of discontinuing this commissioned research and publishing the research results obtained up to that point of cessation, “completion of this commissioned research” shall be modified to “cessation of this commissioned research”.

(Participation and collaboration of research collaborators)

Article 22. Party A and Party B may have persons other than their researchers participate in this commissioned research as research collaborators after obtaining consent from the other party when they deem it necessary to have the persons other than their researchers participate and collaborate to conduct this commissioned research.

2. In having a person other than researchers participate as a research collaborator, Party A or Party B (hereinafter referred to as “the party concerned”) who has requested the consent of the other party to add the person other than their researchers as a research collaborator shall have the research collaborator comply with the provisions of this Agreement.
3. The party concerned shall set forth separate provisions to have the person to be a research collaborator comply with the provisions of this Agreement and be able to claim compensation for damage against the research collaborator if s/he causes damage to the other party.
4. Party A and Party B shall discuss and determine the handling of cases where research collaborators produce inventions etc. in the course of this commissioned research.

*The handling of inventions etc. produced by research collaborators and their contractual obligations may be defined in more detail.

(Cancellation of agreement)

Article 23. Party A may terminate this Agreement if Party B fails to pay the research expenses specified in Section 7 of the contract item table by the established due date for payment.

2. Party A and Party B may terminate this Agreement in cases falling under any of the following items where the situation is not rectified within 0 days from the demand:

2-1. When the other party acts in an inappropriate or unjust manner in implementing this Agreement

2-2. When the other party breaches this Agreement.

(Compensation for damages)

Article 24. Party A or Party B shall compensate for damage if Party A, Party B, a researcher, or a research collaborator inflicts damage on the other party due to any of the grounds listed in the preceding articles, intentionally, or by gross negligence.

(Effective period of the Agreement)

Article 25. The validity of this Agreement shall be from the date of the contract to the period of termination set forth in Section 3 of the contract item table.

2. The provisions of Articles 2, 3, 11, 12, 14 to 22, 24, and 27 shall remain effective until the period set forth in the relevant clause or all of the subject matters cease to exist even after the expiration of this Agreement.

(Discussions)

Article 26. Party A and Party B shall discuss and establish provisions for the matters not stipulated in this Agreement if necessary.

(Jurisdiction)

Article 27. Appeals filed in relation to this Agreement shall be under the jurisdiction of the Aomori District Court, which is located at Party A.

Two copies of this Agreement shall be created to certify that this Agreement has been duly signed, with Party A and Party B retaining one copy each.

DD/MM/YYYY

(Party A) 1 Bunkyocho, Hirosaki City, Aomori
Hirosaki University
Contracting officer

(Party B) Address
Name

Instructions on the preparation of contract

1. The following clauses shall be added as appropriate in cases where the commissioned research is aimed at creating a database or a program:

(Copyright of databases etc.)

Article ○. Party A may share the copyright of the databases or programs (hereinafter referred to as “databases etc.”) created in this commissioned research with Party B. In this case, Party A shall discuss and appropriately determine the share of the copyright with Party B.

(Copyright fee)

Article ○. Party B shall pay Party A a copyright fee specified in a separate contract to use databases etc. whose copyright belongs to Party A by copying etc.

2. Party B shall pay Party A a copyright fee specified in a separate contract to use databases etc. whose copyright is shared by Party A and Party B under the provisions of the preceding article by copying etc.

3. Party A and Party B shall pay the copyright fee on permitting a person other than Party A and Party B to use the databases etc. whose copyright is shared by Party A and Party B by copying etc. under the provisions of the preceding article in accordance with their share of the copyright.

2. Optional clauses (to be added as necessary)

(Progress management)

Article ○. Party A shall compile a progress report every ○ month(s) based on the progress of this commissioned research and report to Party B within ○○ days.

2. In addition to the provisions in the preceding paragraph, Party A shall report on the progress of this commissioned research whenever requested by Party B.

3. Party B may express opinions on the report specified in the preceding two paragraphs, and Party A shall take the opinion into consideration.

<*Add the following paragraph to a multi-year agreement>

4. Party A shall compile a year-end performance report and hold a debrief session to discuss the research plan for the next fiscal year onwards within ○○ days from the end of the current fiscal year.

<Example of the content of progress report>

- (1) Research subject
- (2) Achievements up to the present
- (3) Future tasks and schedule
- (4) Special instructions

<Example of the content of year-end performance report>

Add information on expenses and the use of the research results to the progress report as necessary.

*The items of the report listed in the dotted frame are merely examples. The report shall include the information agreed upon with the other party.