

[For Non-Corporate Counterparty]

COLLABORATIVE RESEARCH AGREEMENT

**THIS COLLABORATIVE RESEARCH AGREEMENT** (this “Agreement”) is made and entered into effective as of [MONTH] [DAY], [YEAR] by and between **KEIO UNIVERSITY**, having its principal place of business at 2-15-45 Mita, Minato-ku, Tokyo 108-8345, Japan (“Keio”), and [**NAME OF COUNTERPARTY**], having its principal place of business at [ADDRESS] (the “Counterparty”). Each of Keio and Counterparty may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

In consideration of the mutual covenants and promises herein contained, Keio and Counterparty agree as follows:

**Article 1** DEFINITIONS.

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement have the respective meanings set forth below:

“Completion Date” means the date on which the Research Project is completed, terminates or is cancelled pursuant to this Agreement.

“Intellectual Property Rights” mean any or all of the following and all rights associated therewith: (i) all domestic and foreign patents, and applications therefor, and all reissues, reexaminations, divisions, renewals, extensions, continuations and continuations-in-part thereof; (ii) all inventions (whether patentable or not), invention disclosures and improvements; (iii) trade secrets, know-how, and confidential and proprietary information; (iv) all copyrightable works (including all software, source code, object code and other computer program work and databases) and all copyrights, and all registrations and applications therefor; (v) all mask works, mask work registrations and applications therefor; (vi) all industrial designs and any registrations and applications therefor; and (vii) all trade names, corporate names, logos, domain names, trade dress, trademarks, service marks, together with all goodwill associated therewith, and all registrations and applications therefor.

“Losses” mean losses, liabilities, damages, costs and expenses, including, without limitation, reasonable attorneys’ fees and expense and costs of investigation and defense.

“Research Project” means the research project set forth in Schedule A.

“Research Result” means any tangible or intangible result developed, acquired or reduced to practice in the course of the Research Project, including, without limitation, any invention, right to Intellectual Property Rights, technical information, data, know-how and materials that relate to the purpose of the Research Project.

**Article 2** RESEARCH PROJECT.

2.1 The respective work of Keio and Counterparty under the Research Project is described in Schedule A. Each Party intends to contribute, each in its area of expertise, to the Research Project, and shall use its reasonable efforts to perform its work under the Research Project in accordance with the terms and conditions of this Agreement.

2.2 Each Party shall assign a principal investigator who directs and supervises the Research Project (a “Principal Investigator”) as set forth in Schedule A. [Keio may assign a

research manager (a “Research Manager”) who conducts the Research Project under the direction and supervision by the Principal Investigators.] Either Party may use any of its officers, employees or[, in case of Keio,] students in the performance of the Research Project (collectively with the Principal Investigator [and the Research Manager], the “Researchers”), provided that each such Party remains fully liable for the actions or omission of its Researchers. Either Party may replace, add or remove its Researchers [(other than its Principal Investigator)] at its sole discretion upon prior written notice to the other Party.

2.3 [Counterparty / Each Party] acknowledges and agrees that nothing in this Agreement shall be construed to limit the freedom of [Keio / the other Party] or its Researchers from engaging in research similar to the Research Project.

[2.4 If an applicable committee or organ of Keio determines that the Research Project has deviated from the purpose, scope and manner originally intended or is inappropriate under the ethics rules and other internal rules of Keio, Keio may, at its discretion, amend or discontinue the Research Project without any liability.]

### **Article 3** RESEARCH EXPENSES.

3.1 [Each Party shall bear such costs and expenses necessary for or relating to the conduct by such Party of the Research Project as set forth in Schedule A (the “Research Expenses”).] *or* [Counterparty shall bear such costs and expenses (including, without limitation, Keio’s general administration costs) necessary for or relating to the conduct of the Research Project as set forth in Schedule A (the “Research Expenses”).]

3.2 Unless otherwise agreed by the Parties, Counterparty shall pay the Research Expenses to Keio within [sixty days from the date of this Agreement] *or* [on or before the due date set forth in the applicable invoice issued by Keio]. All payments by Counterparty hereunder shall be made by wire transfer to the bank account as instructed separately by Keio.

3.3 In the event of early termination of this Agreement or discontinuation of the Research Project pursuant to **Article 12**, [each Party shall pay all Research Expenses incurred by it prior to the date of such termination or discontinuation.] *or* [Counterparty shall pay all Research Expenses which have been incurred by Keio up to the date of such termination or discontinuation.]

3.4 All payments by Counterparty hereunder shall be made without any withholding or deductions unless withholding is required by applicable laws. If any taxes are withheld under applicable laws, Counterparty shall forthwith pay such additional amount as is necessary to ensure that the net amount actually received by Keio is equal to the amount that Keio would have received as if no tax had been withheld.

### **Article 4** SITE; FACILITY; EQUIPMENT.

4.1 The Research Project shall be conducted at the site specified in Schedule A.

4.2 Keio may request Counterparty to provide Keio with, and Counterparty shall provide, any equipment, instrument, apparatus or installation owned or used by Counterparty (collectively, “Equipment”) in order for Keio to carry out its performance of the Research Project. Keio shall use and maintain such Equipment made available by Counterparty using due care of a good manager commencing upon the installation of the Equipment at Keio’s research facility and continuing until the completion of the Research Project. Counterparty shall remove the Equipment installed at Keio’s research facility promptly after the completion of the Research

Project. Any and all expenses for the delivery, installation and removal of the Equipment pursuant to this **Article 4.2** shall be borne by Counterparty.

4.3 All materials, supplies and other equipment purchased for the Research Project with funds provided under this Agreement, shall remain the property of Keio after completion of the Research Project.

#### **Article 5** RESEARCH REPORT.

5.1 Each Party shall generally keep the other Party reasonably informed, orally or in writing, of the progress or results of the work performed in connection with the Research Project, principally through their respective Principal Investigators.

5.2 The Parties shall prepare and submit to each other a final written report of the Research Project within [sixty] calendar days after the Completion Date or at such other time as mutually agreed between the Parties.

#### **Article 6** RESEARCH MATERIALS.

6.1 The Parties agree that, except as prohibited by applicable law or as would result in a breach of any contractual obligation to a third party, each Party will disclose to the other Party all materials, information or data that are necessary for the performance of the Research Project (collectively, the “Research Materials”).

6.2 Neither Party may use any Research Materials provided by the other Party for any purposes other than conducting the Research Project without the prior written consent of the other Party. Unless the Parties agree otherwise, the Research Materials shall be considered the “Confidential Information” of the Party providing them.

6.3 Each Party shall promptly return any Research Materials provided by the other Party at the other Party’s request [or upon any termination or expiration of this Agreement].

#### **Article 7** OWNERSHIP OF RESEARCH RESULTS.

7.1 All rights, title and interest (including all Intellectual Property Rights) in and to any Research Result developed, conceived or reduced to practice in the performance of the Research Project solely by the Principal Investigator or Researcher of one Party (a “Sole Invention” and “Sole Intellectual Property”) shall be owned solely by such Party.

7.2 All rights, title and interest (including all Intellectual Property Rights) in and to any Research Result that is developed, conceived or reduced to practice in the performance of the Research Project jointly by the Principal Investigators or Researchers of both Parties (a “Joint Invention” and “Joint Intellectual Property”) shall be jointly owned by the Parties. The Parties shall consult with each other to evaluate the degree of contribution of each Party to the Joint Intellectual Property in order to determine the proportion of ownership of the Joint Intellectual Property.

7.3 All tangible or intangible property owned by each Party prior to the commencement of the Research Project and provided to the other Party in the course of the Research Project shall remain the sole property of first Party.

**Article 8** INTELLECTUAL PROPERTY.

8.1 Each Party agrees (i) not to use, exploit or implement any Joint Intellectual Property for any purpose other than educational, experimental or research purposes, (ii) not to grant to any third party a license to exploit or implement its rights in the Joint Intellectual Property, or (iii) not to transfer, grant a security interest in, or otherwise dispose of its rights, title or interest in or to the Joint Intellectual Property to any third party, in each case without the prior written consent of the other Party.

8.2 Except as otherwise agreed between the Parties, the Parties may jointly file a patent application or other applications for the registration of any Intellectual Property Rights in Japan or in any foreign jurisdiction (an "Application") with respect to any Joint Invention, provided that the Parties have first executed a joint application agreement between the Parties setting forth, among other matters, the content of the application, the application process, the maintenance and allocation of costs.

8.3 Either Party may solely file an Application with respect to any of its Sole Invention at its sole discretion; provided, however, that the filing Party shall, prior to the filing of the Application, notify the other Party and obtain such other Party's confirmation that the relevant Sole Invention was in fact conceived solely by the prosecuting Party.

**Article 9** NO SUBCONTRACT.

Neither Party may subcontract or otherwise delegate to any third party, in whole or in part, the performance of any of its obligations regarding the Research Project without the prior written consent from the other Party.

**Article 10** CONFIDENTIALITY.

10.1 The term "Confidential Information" means any and all technical information or materials, including, but not limited to, the Research Materials, furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that (i) is in electronic, written or other tangible form and clearly marked as "Confidential", or (ii) is disclosed orally or visually and designated as confidential at the time of the oral or visual disclosure and, further, within thirty days after the oral or visual disclosure, the summary of which is furnished to Receiving Party in writing clearly marked as "Confidential".

10.2 The term "Confidential Information" does not, however, include information that (i) is or becomes within the public domain through no act of the Receiving Party or its Representatives in breach of this Agreement; (ii) is already in the Receiving Party's possession without obligation of confidentiality at the time of disclosure and the Receiving Party; (iii) has been lawfully obtained by the Receiving Party from a third party having the right to make the disclosure who places no obligation of confidence upon the Receiving Party; or (iv) is independently developed by the Receiving Party without access to or use of the Confidential Information of the Disclosing Party.

10.3 The Receiving Party shall keep the Confidential Information confidential and shall not, without the Disclosing Party's prior written consent, disclose any Confidential Information in any manner whatsoever, in whole or in part, to any third party; provided, however, that the Receiving Party may disclose the Confidential Information or portions thereof to its directors, officers, employees, advisors and[, in the case of Keio,] students, (collectively, "Representatives") (i) who need to know the Confidential Information to conduct the Research Project and (ii) who

have been advised of by the Receiving Party and have agreed to maintain the confidential nature of the Confidential Information. The Receiving Party agrees to be responsible for any and all breaches of this **Article 10** by its Representatives.

10.4 The Receiving Party shall use any Confidential Information of the Disclosing Party solely for the purpose of conducting the Research Project and shall not use, directly or indirectly, any Confidential Information in whole or in part for any other purpose whatsoever.

10.5 In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by applicable law, regulation or legal process to disclose any of the Confidential Information, the Receiving Party shall (unless prohibited by applicable law) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such request or requirement, and consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow the request. In the event that disclosure of any Confidential Information is legally required, the Receiving Party or its Representatives, as the case may be, shall furnish only that portion of the Confidential Information which is legally required and exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded to such Information.

10.6 At any time upon the request of the Disclosing Party subsequent to the Completion Date, the Receiving Party shall, at its own expense, promptly deliver to the Disclosing Party, or at the Disclosing Party's request, destroy, all copies of the Confidential Information (whether in written, electronic or other tangible format) in the Receiving Party's or its Representatives' possession that was delivered to the Receiving Party by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party and its Representatives shall be permitted to retain Confidential Information that would be unreasonably burdensome to destroy (such as archived computer records) or to the extent required to comply with applicable law or regulation, provided that any information so retained herein shall remain subject to the terms of this **Article 10**.

10.7 This **Article 10** will survive for two years after the termination of this Agreement.

#### **Article 11** PUBLICATION.

Neither Party is restricted from presenting at symposia or professional meetings, or from publishing in journals or other publications, the Research Results acquired under the Research Project; provided, however, that if such presentation or publication is made by a Party within two years from the Completion Date, the other Party shall be provided with copies of the proposed disclosure at least [thirty] calendar days before the presentation or publication date. The other Party may review the proposed disclosure (i) to ascertain whether its Confidential Information would be disclosed by the proposed disclosure or (ii) to identify any potentially patentable Research Results so that appropriate steps may be taken to protect such Research Results. The other Party shall provide comments, if any, in writing within [fifteen] calendar days after delivery of the proposed disclosure.

#### **Article 12** DISCONTINUATION OF RESEARCH PROJECT.

Either Party may, after engaging in mutual consultation between the Parties, discontinue the Research Project if it becomes impracticable for such Party to continue the Research Project due to the occurrence of an event or circumstance beyond the reasonable control of such Party, including acts of God. Neither Party is liable for any Losses incurred by the other Party due to such discontinuation of the Research Project.

**Article 13** EXPORT CONTROL.

13.1 Neither Party may provide any materials or information that it has been sold, transferred, leased or otherwise provided by the other Party hereunder, to any third party that intends to undermine the maintenance of international peace and security.

13.2 In performing their respective obligations hereunder, the Parties shall comply with all applicable export control regulations, including the Foreign Exchange and Foreign Trade Act of Japan (Law No. 228 of 1949, as amended) and the U.S. Export Administration Regulations. Neither Party shall disclose to the other Party any information that contains information, technology or data of which use, export, release or transfer is subject to any governmental restriction or prohibitions, without the prior written consent of the other Party.

**Article 14** TERM AND TERMINATION.

14.1 The term of this Agreement commences on [the date hereof] or [the first day of the research period as set forth in Schedule A] and continues in effect until the submission of the final written report pursuant to **Article 5.2** or unless earlier terminated in accordance with this Agreement.

14.2 The Parties may terminate this Agreement at any time by mutual agreement in writing.

14.3 Each Party may terminate this Agreement and any other agreement(s) related to this Agreement upon written notice the other Party if the other Party has breached any of its covenants or obligations contained in this Agreement or such other agreement(s), and such breach has not been cured within thirty days after written notice of such breach from the non-breaching Party.

14.4 **Article 4** (excluding **Article 4.1**), **Article 6.2**, **Article 6.3**, **Article 7**, **Article 8**, **Article 10**, **Article 11**, **Article 13**, **Article 14.4**, and **Articles 15** through **18** shall survive expiration or termination of this Agreement unless otherwise provided in this Agreement.

**Article 15** INDEMNIFICATION, LIABILITY LIMITS.

15.1 [Counterparty / Each Party] shall indemnify and hold harmless [Keio / the other Party] and its affiliates, directors, officers, employees, agents and students against all Losses incurred by [Keio / the other Party] arising from or in connection with any claim, suit or proceeding alleging that the Research Materials or Equipment provided by [Counterparty / the indemnifying Party] infringe, misappropriate or violate the Intellectual Property Rights or other rights of any third party.

15.2 IN NO EVENT SHALL KEIO OR COUNTERPARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OF PROFITS, OPPORTUNITY, OR REVENUE, INCURRED BY THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**Article 16** GOVERNING LAW.

This Agreement and other agreement(s) related hereto shall be governed in accordance with the laws of Japan.

**Article 17 DISPUTE RESOLUTION.**

Except with respect to actions seeking relief other than monetary compensation, any disputes, controversies or differences which may arise between the Parties out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in Tokyo, Japan, in accordance with the Rules of the Arbitration of the International Chamber of Commerce. Any arbitration award granted shall be final and binding on the Parties and shall not be subject to appeal and shall be enforceable in any court of competent jurisdiction. The language for the arbitration procedure shall be [Japanese] and there shall be three arbitrators. Each Party shall nominate an arbitrator. The two Party-appointed arbitrators shall then nominate the third and presiding arbitrator in consultation with the Parties.

**Article 18 GENERAL.**

18.1 Neither Party shall be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond such Party's control, such as acts of God, labor disputes, accidents, civil disorders or commotions, failure of utilities, fire, explosion, or other such occurrences.

18.2 Any notice or communication required or permitted to be given hereunder shall be given in writing and either by personal delivery, by facsimile, by registered or certified mail (with all postage and other charges prepaid) or by e-mail to the address shown below. Any notice delivered by personal delivery, facsimile or e-mail shall be deemed given and effective at the time of delivery. Any notice delivered by registered or certified mail shall be deemed given at the end of the tenth business day after it is posted.

**Keio:**

[Title]

[Address]

Telephone: [ ]

Fax: [ ]

Email:[ ]

**Counterparty:**

[Title]

[Address]

Telephone: [ ]

Fax: [ ]

Email:[ ]

18.3 No provision of this Agreement may be waived, amended or modified, in whole or in part, nor any consent given, unless approved in writing by a duly authorized officer of the Parties hereto.

18.4 Neither Party may assign, transfer or grant a security interest in, in whole or in part, either this Agreement or any of its rights or interests hereunder, or delegate, in whole or in part, any of its obligations hereunder, without the prior written approval of the other Party.

18.5 The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same

or any other provision nor constitute a waiver of the responsibility or obligation itself.

18.6 This Agreement contains the entire agreement between the Parties concerning the Research Project and supersedes any, written or oral, understandings, proposals, or representations by and between the Parties.

18.7 In the event that any provision of this Agreement is deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

18.8 This Agreement may be executed and delivered in separate counterparts, including by facsimile or other electronic transmission, each of which, when so executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date first above written.

Keio:

Keio University

\_\_\_\_\_

Name:

Title

Counterparty:

[NAME OF COUNTERPARTY]

\_\_\_\_\_

Name:

Title

**Schedule A**

**Description of Research Project**

Theme	
Purpose	
Description of Each Party's Roles	
Research Period	
Keio Principal Investigator	
Counterparty Principal Investigator	
Research Manager / Researcher	
Research Site	
Research Expenses	
Other Terms	