

Agreement for Technology Consulting of the National Institute of Advanced Industrial Science and Technology

Establishment: June 1st, 2019

Article 1 (Scope of Application)

This Agreement shall be applicable to the case when the National Institute of Advanced Industrial Science and Technology ("AIST") provides technology consulting in accordance with "Rules on Technology Consulting of the National Institute of Advanced Industrial Science and Technology" ("Rules").

Article 2 (Definitions)

1. The term "Client" as used in this Agreement means a client who received notification set forth in Article 4 paragraph 1 and entered into a Technology Consulting Contract with AIST.

2. The term "Technology Consulting" as used in this Agreement means instructions of useful knowledge among the technical advices specified in the Rules which AIST provides based on their own accumulated technology potential with a certain effort of AIST's employees upon being commissioned from the Client who bears all the related expenses.

3. The term "Confidential Information" as used in this Agreement means any technical information and other information pertaining to one's own business (except the information obtained in the course of or as a result of the Technology Consulting) disclosed by a party ("disclosing party") to the other party ("receiving party") that, (i) is disclosed in writing or electronic medium which is designated as "Confidential", or (ii) is disclosed orally, but identified as confidential at the time of disclosure and confirmed within thirty (30) days by a written summary sufficient for identification; provided, however,

The information which falls under any of the following shall not be Confidential Information:

(1) information which was in the public domain at the time of disclosure or thereafter becomes publicly known without any fault of the receiving party;

(2) information that is lawfully obtained from a third party under no confidentiality obligation;

(3) information that can be proven in writing to have been in the possession of the receiving party at the time of receiving the information from the disclosing party;

(4) information that can be proven in writing to have been developed independently by the receiving party without use of or reference to the disclosed information;

(5) information that has been developed independently by the receiving party after disclosure without use of or reference to the disclosing party's Confidential Information;

or

(6) information with respect to which the receiving party obtained prior written consent of the disclosing party for disclosure

4. "Invention(s)" as used in this Agreement means the invention as set forth in Article 2, Paragraph 7 of Rules on Handling of Employee Invention of the National Institute of Advanced Industrial Science and Technology (Rule No. 13-26).

Article 2, Paragraph 7 of Rules on Handling of Employee Invention of the National Institute of Advanced Industrial Science and Technology (Rule No. 13-26)

"Invention" as used in this Rules means all of the following: invention subject to a patent right; idea subject to a utility model right; creation subject to rights to registered design, circuit layout usage and written product of Programs; breed subject to a breeder's right; and devising subject to Know-how.

5. "Commissioned Research Contract" as used in this Agreement means the contract as set forth in

Article 5 of Rules on Commissioned Research of the National Institute of Advanced Industrial Science and Technology (Rule No. 13-21).

Article 3 (Application for Technology Consulting)

1. An entity who applies a Technology Consulting (“Applicant”) shall submit an application for Technology Consulting (Attached Form No. 1; the "Application") to AIST.

2. In case the Client desires to amend the original Contract including but not limited to add the work or to extend the term of the original Contract, the Client shall submit an amendment application for Technology Consulting (Attached Form No. 2; the "Amendment Application") to AIST.

Article 4 (Acceptance of Technology Consulting)

1. When the requirements listed in the following items are completely satisfied and AIST decides to carry out the Technology Consulting, AIST may notify the Applicant of providing the Technology Consulting by an acceptance of Technology Consulting (Attached Form No. 3; the "Acceptance"). This notification shall cause a Technology Consulting Contract ("Contract") between AIST and the Applicant to be concluded or amended in accordance with this Agreement and Acceptance.

(1) The requested consulting described in the Application shall contribute to the dissemination of results stipulated in Article 11, Paragraph 1, Sub-paragraph 4 of the Act on the National Institute of Advanced Industrial Science and Technology, No. 203 of 1999,

Article 11, Paragraph 1 of the Act on the National Institute of Advanced Industrial Science and Technology, No. 203 of 1999

(1) To achieve the purposes specified in Article 3, the Institute shall carry out the following operations:

(i) research and development concerning science and technology in mining and industry, and operations related to such research and development;

(ii) geological surveys;

(iii) establishment of standards for measurement, calibration, inspections, research and development of measuring instruments, operations related to these, and training related to measurement

(iv) technical guidance pertaining to the operations specified in the three preceding items and dissemination of the result :

(2) The requested consulting described in the Application requires AIST’s knowledge and is anticipated to be difficult to be carried out by private sectors.

(3) The accomplishment of other duties of AIST is anticipated not to be remarkably affected by enforcement of the requested consulting.

(4) The Applicant assures that he/she will complete the total payment of the fund required for the Technology Consulting (hereinafter “Consulting Fees”) stipulated in Article 8 paragraph 1 to AIST prior to the Technology Consulting commenced or, if AIST particularly admits, by the due date stated in a bill issued by AIST.

2. AIST may notify the effect to the Applicant with a written notice when AIST decides not to conduct the Technology Consulting.

3. The content of work which AIST provides based on the Contract concluded or amended as stipulated in paragraph 1, the term and Consulting Fees shall be as provided for in the Acceptance.

Article 5 (Matters to be observed and Scope of Work)

1. AIST and the Client shall observe the terms and conditions of this Agreement and Acceptance.

2. AIST shall not be responsible for the work beyond the scope stated in the Acceptance.

3. The Technology Consulting may be provided in meeting at AIST’s or the Client’s premises, or by means of telephone, e-mails, facsimiles etc..

Article 6 (Use of Equipment and Facilities)

1. To conduct the Technology Consulting, AIST or the Client shall, if necessary, accept the other party’s

employees to the respective premises through necessary procedures and provide them necessary facilities.

2. To conduct the Technology Consulting, if AIST's or the Client's employees use the other party's facilities or equipment etc., they shall observe the internal instructions of the other party. In this case, the other party shall give the necessary education and the employees who intend to use the other party's facilities shall take the said education.

3. To conduct the Technology Consulting, if the Client makes possession or uses of a part of AIST's facilities and carries out all or part of the Technology Consulting, AIST and the Client shall conclude the separate contract stipulated the necessary matters based on the Procedures on Managing Tangible Fixed Assets.

4. If it is intended to use the other party's facilities or equipment etc. under the foregoing three paragraphs, AIST or the Client shall give their own employees instructions to use them with due care of a prudent manager.

5. If AIST or the Client damages the other party's facilities and equipment by willful misconduct or gross negligence, the damaging party shall repair them or take other means with its own expenses and responsibilities.

Article 7 (Work-related Accidents)

If the Work-related accidents occurred arising out of or in connection with this Contract, the employer of the related employees shall be responsible and shall not claim for the damages to the other party. Nevertheless, the other party shall cooperate in necessary procedures on and after the time of accident.

Article 8 (Consulting Fees etc.)

1. The Client shall pay a total amount of the following expenses by adding consumption taxes ("Consulting Fees") by a scheduled date:

(1) The costs directly needed to execute the Technology Consulting ("Necessary Costs") and Technology Consulting charges for instructions AIST provides based on their own accumulated technology potential ("Direct Costs", including both Necessary Costs and Technology Consulting charges).

(2) The amount judged as needed for executing the Technology Consulting other than the Direct Costs set forth in the foregoing paragraph ("Indirect Costs").

2. The Consulting Fees and the cost for the occupation use of a part of the AIST's facilities by the Client under the provisions of Article 6 Paragraph 3 hereof, shall be calculated subject to the Procedures on Research Expenses Calculation of the National Institute of Advanced Industry Science and Technology (Procedure No.19-15).

3. Equipment acquired by Consulting Fees shall belong to AIST.

Article 9 (Reimbursement for Consulting Fees)

1. AIST shall not reimburse the Consulting Fees paid up by the Client for any reasons. Provided, however, that in case of any of the followings, AIST shall reimburse to the Client in whole or part of the Consulting Fees already paid by the Client excluding the amount calculated by the formula below ("Base Amount"). "Consulting Fees regarded as needed till termination" means the amount obtained by multiplying amount equivalent to day-rate of the Consulting Fees (the amount obtained by dividing the Consulting Fees by the number of days for the term of the Contract) by the number of the days till termination.

(1) In the event the Contract is canceled by the Client in case AIST falls under any items of Article

13 Paragraph 1.

(2) In the event the Contract is terminated by AIST or the Client pursuant to the Article 13 paragraph 2.

2. In the case stipulated in foregoing 2 items, if the amount paid by the Client is less than the Base Amount, the Client shall pay the shortage amount to AIST before the due date stated in a bill issued by AIST. In this case, the Client shall no longer pay the unpaid Consulting Fees over the shortage amount

Article 10 (Confidentiality)

1. AIST and the Client shall keep confidential the Confidential Information provided by the other party and shall not provide or disclose the same to any third party without the other party's prior written consent.

2. AIST and the Client shall designate a person(s) in charge of management of the Confidential Information and shall manage the Confidential Information strictly.

3. AIST and the Client may disclose the Confidential Information only to a person(s) who is (are) a member(s) of AIST or the Client and is (are) engaged in the Technology Consulting concerned. At this case, AIST and the Client shall clearly inform the said person(s) that the disclosed information is confidential and the said person(s) shall assume similar obligations to this Agreement.

4. Notwithstanding the paragraph 1, when disclosure of Confidential Information is required by a result of governmental or judicial order, the required party may disclose Confidential Information to such a governmental organization or the court, to the minimum extent necessary for the purpose, without the other party's prior consent.

5. After the completion of the Contract, each of the parties shall return or destroy all Confidential Information of the other party in accordance with instructions from the other party.

Article 11 (Transition to Commissioned Research etc.)

In the event that a new invention is expected to be made in the course of the Technology Consulting, each of the parties shall cooperate immediately with each other in concluding an appropriate contract including, but not limited to, a Commissioned Research Contract etc..

Article 12 (Disclaimer)

AIST makes no representation and extends no warranties of any kind of following: that the Technology Consulting shall correspond to the Client's demand, that the Technology Consulting shall fit for a particular purpose, and that the content of the Technology Consulting shall be marketable and realizable, either expressed or implied with respect of the Technology Consulting conducted under this Contract. AIST shall not be liable to the Client for any damages on the Client or any third party caused by manufacture or sale of products, provision of service, or any activities conducted by the Client, the Client's customers, or any related parties, with the content of the Technology Consulting.

Article 13 (Early Termination)

1. In addition to what is provided for in the Special Provisions, AIST or the Client may terminate the Contract if the other party corresponds to any of the following:

(1) if either party breaches this Agreement, then the non-breaching party gives notice to the defaulting party of such default, setting forth a cure period of at least ten (10) days and if the defaulting party fails to cure such default within the designated time period;

(2) if a government agency with jurisdiction cancels or suspends the right to do business;

(3) if the party's drafts or checks are not honored, or if the party is subject to provisional seizure,

provisional disposition, or compulsory execution;

(4) if either party becomes insolvent, or if proceedings are instituted against the party for corporate rehabilitation, company arrangement, special liquidation, or corporate reorganization; or

(5) if the party has adopted a resolution for dissolution of the party.

2. AIST or the Client may terminate the Contract if performance becomes difficult due to force majeure, including, but not limited to, natural disaster, or retirement, suspension or long nursing of AIST's employees who are in charge of the Technology Consulting.

Article 14 (Survival)

Notwithstanding the term of this Contract, the provision of Article 10 shall be valid for three (3) years after the termination of this Contract; and the provisions of Article 6 Paragraph 5, Article 7 through 9, 12, 14, 15 and 16 shall survive the termination of this Contract.

Article 15 (Jurisdiction)

AIST and the Client agree that Tokyo District Court is the competent Court of the first trial for dispute related to the Contract.

Article 16 (Governing Law)

This Agreement shall be governed by and construed in accordance with the laws of Japan without reference to principles of conflict of laws.

Article 17 (Miscellaneous)

When any doubts occur about this Agreement or any questions arise about matters not provided for in this Agreement, AIST and the Client shall discuss the matter and seek to resolve it on case by case basis through amicable discussions in good faith.

(Termination due to the Involvement in an Organized Crime Group etc.)

(1) Should the either party or their officer and agents acting on their behalf prove to be a member of anti-social forces, such as an organized crime group (meaning the organized crime group defined in Article 2 item 2 (ii) of the Japanese Act on Prevention of Unjust Acts by Organized Crime Group Members (Japanese Act No. 77 of 1991) (hereinafter referred to as an "Organized Crime Group" in this Special Provisions), or be involved in or embrace such anti-social forces, the other party may immediately terminate this Contract without any notice.

(Claim for Damages)

(2) In case where this Contract is terminated under the forgoing paragraph, the terminating party shall have no obligations to compensate the other party for damages due to the termination; provided, however, that the other party shall compensate the terminating party for such damages subject to the AIST's rules.

(Report/Notification of Unjustified Interference)

(3) When either party receives any unjustified interference from anti-social forces, including Organized Crime Group, the party shall deny such interference, notice the other party and any criminal investigation agency like a police that effect, and make cooperate each other for exclusion of that.

Supplementary Provisions

This Agreement shall be enforced from June 1st, 2019.

MM dd, yyyy (date)

To: XXX, President
National Institute of Advanced Industrial Science and Technology

Application for Technology Consulting

The Applicant hereby applies for Technology Consulting by the National Institute of Advanced Industrial Science and Technology (AIST), Japan, in accordance with the Agreement for Technology Consulting of AIST. The Applicant declares to observe all of the conditions prescribed by the Agreement.

Now therefore, the Applicant applies for the Technology Consulting as follows;

1. Title
(Please describe a purpose or overview of the Technology Consulting briefly.)
2. Description of Work
(Please describe work of the Technology Consulting.)
3. Desired Period
Desired Period: From MM dd, yyyy To MM dd, yyyy
Desired Frequency: 00 times a month, total 00 times (about 00 hours for each time)
4. Researcher(s) of AIST
(Please describe name(s), affiliation(s) of all the researchers of AIST)
5. Participant(s) of Applicant
(Please describe name(s), affiliation(s) of all the participants of Applicant)
6. Consulting Fees
Consulting Fees Amount : JPY 0,000,000-
7. Applicant Contact Information for Contract
Address:
Affiliation:
Title: Name:
Tel: E-mail:
8. Others

(Applicant)

XXXX, XXXX (name and title of representative) (seal or signature)
XXXX (company name)
XXXX (address)

MM dd, yyyy (date)

To: XXX, President
National Institute of Advanced Industrial Science and Technology

Amendment Application for Technology Consulting

The Applicant hereby applies to amend the existing Technology Consulting Contract between the National Institute of Advanced Industrial Science and Technology (AIST), Japan, accepted MM dd, yyyy (“Original Contract”), in accordance with the Agreement for Technology Consulting of AIST. The Applicant declares to observe all of the conditions prescribed by the Agreement.

Now therefore, the Applicant applies to amend the Original Contract as follows:

1. Title

(Please describe a purpose or overview of the Technology Consulting briefly.)

2. Description of Work

(Please describe work of the Technology Consulting.)

3. Desired Period

After the amendment:

Desired Period: From MM dd, yyyy To MM dd, yyyy

Desired Frequency: 00 times a month, total 00 times (about 00 hours for each time)

4. Researcher(s) of AIST

(Please describe name(s), affiliation(s) of all the researchers of AIST)

5. Participant(s) of Applicant

(Please describe name(s), affiliation(s) of all the participants of Applicant)

6. Consulting Fees

Consulting Fees Amount after the amendment : JPY 0,000,000-

7. Contact Information for Contract

Address:

Affiliation:

Title:

Tel:

Name:

E-mail:

8. Others

(Applicant)

XXXX, XXXX (name and title of representative) (seal or signature)

XXXX (company name)

XXXX (address)

MM dd, yyyy (date)

To: XXXX, XXXX (Applicant's name and title)

Acceptance of Technology Consulting

AIST hereby accepts the application from the Applicant as of MM dd, yyyy whose title is as below. The Consulting Fees shall be paid to AIST on or before the due date stated in a bill issued by AIST.

Application for the Technology Consulting has been accepted as follows:

1. Title

2. Description of Work

3. Period

Period: From MM dd, yyyy To MM dd, yyyy

Planned Frequency: 00 times a month, total 00 times (about 00 hours for each time)

Maximum working hours of AIST's researcher(s) for the Technology Consulting: 00 hours

4. Researcher(s) of AIST

5. Consulting Fees

Consulting Fees amount: JPY 0,000,000-

Details:

1. Direct Costs

Technology Consulting Charges: JPY 0,000,000-

Necessary Costs: JPY 0,000,000-

2. Indirect Costs: JPY 0,000,000- (rate: %)

6. Others

XXXXXX, Director,
Collaboration Promotion and International Affairs Division,
Research and Innovation Promotion Headquarters
National Institute of Advanced Industrial Science and Technology