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Non-Disclosure Agreement  
(New materials)

An agreement on the handling of confidential information disclosed by one party to the other (hereinafter the "Agreement") is made between Company X (hereinafter "Party A") and Company Y (hereinafter "Party B").

RECITALS

Whereas:

1. Party A has developed a new heat-dissipating material  $\alpha$ ; and
2. Parties A and B intend to discuss whether to collaborate on the research and development of an automobile headlight cover using the new material  $\alpha$  as a new product (hereinafter the "Purpose").

NOW IT IS HEREBY AGREED as follows:

**Article 1 (1) (Option 1 - Scope of Confidential Information: unlimited)**

As used herein, the term "Confidential Information" refers to any information disclosed by one party (hereinafter the "Disclosing Party") to the other (hereinafter the "Receiving Party") in furtherance of the Purpose, whether in writing, orally, by the use of an electromagnetic medium or any other type of disclosure method or means, as well as to this Agreement (the existence and the content hereof), any discussion or negotiation between Parties A and B (the existence or content thereof) and recording media, materials, devices, and other tangible objects (including but not limited to those specified in Exhibit \*\*) that contain said information.

**Article 1 (1) (Option 2 - Scope of Confidential Information: needs to be designated (Orally disclosed information cannot be retroactively designated as confidential.))**

As used herein, the term "Confidential Information" refers to information that is disclosed, together with a clear statement at the time of such disclosure that it is confidential, by one party (hereinafter the "Disclosing Party") to the other (hereinafter the "Receiving Party") in

furtherance of the Purpose, whether in writing, orally, by the use of an electromagnetic medium or any other type of disclosure method or means, as well as to recording media, materials, devices and other tangible objects that contain said information.

**Article 1 (1) (Option 3 - Scope of Confidential Information: needs to be designated (Orally disclosed information can be retroactively designated as confidential.))**

As used herein, the term "Confidential Information" refers to information disclosed by one party (hereinafter the "Disclosing Party") to the other (hereinafter the "Receiving Party") in furtherance of the Purpose, whether in writing, orally, by the use of an electromagnetic medium or any other type of disclosure method or means, as well as to recording media, materials, devices, and other tangible objects that contain said information, provided that if the information is disclosed in writing or electronically (hereinafter collectively "in Written Form"), the relevant document shall include a clear statement that it is confidential, and if the information is disclosed orally or in some intangible manner, then the Disclosing Party shall provide an outline of the information, the Disclosing Party and the date and time of the disclosure in a Written Form, together with a statement that such information is confidential to the Receiving Party within 14 days after the disclosure.

**Article 1 (2) (Definition and Disclosure of Confidential Information) [same for options 1 to 3]**

Notwithstanding the preceding paragraph, the following information shall not be considered Confidential Information if the Receiving Party can establish in writing or electronically (hereinafter collectively "in Written Form") that such information is:

- (i) Information that the Receiving Party already owns at the time of the disclosure,
- (ii) Information that the Receiving Party legitimately obtains from a third party, with no obligation of confidentiality, after the disclosure,
- (iii) Information that the Receiving Party gains or creates by themselves, independently of the information disclosed by the other Party, after the disclosure,
- (iv) Information that is already publicly known at the time of the disclosure, and
- (v) Information that becomes publicly known for reasons not attributable to the Receiving Party after the disclosure.

**Article 2 (Confidentiality)**

(1) The Receiving Party shall manage and maintain Confidential Information with the due care of a prudent manager and shall not disclose or leak it to a third party without prior written

consent of the Disclosing Party.

(2) Notwithstanding the preceding paragraph, the Receiving Party may only disclose Confidential Information to directors and employees of the Receiving Party (hereinafter collectively the "Directors") to the extent necessary in furtherance of the Purpose.

(3) When making a disclosure as specified in the preceding paragraph, the Receiving Party shall exercise necessary and adequate supervision over the Directors to ensure that Confidential Information is not leaked, lost, or damaged. The Directors shall have the obligation of confidentiality specified herein during and after the period of employment. If any Director discloses, leaks, or uses Confidential Information for any purpose other than as specified herein, such a disclosure, leak, or use shall be regarded as an act done by the Receiving Party to which the Director(s) belong.

(4) Except as specified in the immediately following paragraph, the Receiving Party shall obtain prior written consent from the Disclosing Party to disclose Confidential Information to a third party. In this case, the Receiving Party shall place the third party under the same obligations as specified herein and ensure that the third party complies with said obligations.

(5) Notwithstanding the preceding paragraphs, the Receiving Party may disclose Confidential Information in each of the following cases (in the cases of (i) and (ii), however, the Disclosing Party shall be notified in advance, wherever possible). When disclosing Confidential Information as specified in this paragraph, the Receiving Party shall notify the Disclosing Party of the disclosure without delay.

(i) If the disclosure is required by law,

(ii) If the disclosure is required by a court order, the competent authorities, or other regulations,  
or

(iii) If the Receiving Party needs to consult with someone who is legally required to comply with an obligation of confidentiality, such as an attorney at law, a patent attorney, a certified public accountant, a tax accountant and a judicial scrivener.

(6) Notwithstanding paragraphs (1) to (3) of this article, either Party hereto may disclose the following fact to a third party without prior consent of the other Party:

The fact that Parties A and B are discussing whether to enter a joint research and

development program using the new heat-dissipating material  $\alpha$  developed by Party A.

**Article 3 (Prohibition of Use for Any Other Purpose)**

The Receiving Party shall not use Confidential Information disclosed by the Disclosing Party for any other purpose than the Purpose as specified herein.

**Article 4 (Handling of Reproduced Confidential Information)**

When the Receiving Party copies or reproduces Confidential Information (whether on paper, an electromagnetic medium, an optical disk, film or any other type of recording medium) to the extent necessary in furtherance of the Purpose, information generated as a result of the reproduction shall also be handled as Confidential Information.

**Article 4 (Alternative option: stricter conditions on reproduction)**

The Receiving Party may copy or reproduce Confidential Information (whether on paper, an electromagnetic medium, an optical disk, film or any other type of recording medium) to the extent necessary in furtherance of the Purpose only if the Disclosing Party gives prior written consent. Information generated as a result of the reproduction shall also be handled as Confidential Information.

**Article 5 (Prohibition of Reverse Engineering)**

The Receiving Party shall not analyze or inspect the composition or structure of Confidential Information or perform any similar investigation without prior written consent of the Disclosing Party.

**Article 6 (Destruction or Return of Confidential Information)**

(1) Upon written request by the Disclosing Party either during the term or following the expiration or termination of this Agreement, the Receiving Party shall either immediately destroy or return to the Disclosing Party at its own expense, and cause any third party who had received Confidential Information from the Receiving Party to immediately destroy or return to the Disclosing Party at its own expense, the Confidential Information they possess, as instructed by the Disclosing Party.

(2) When the Disclosing Party requests the Receiving Party to dispose of Confidential Information, the Receiving Party shall immediately dispose of the media that contains all such Confidential Information and provide documentation proving the Receiving Party fulfilled its obligation to dispose of the said information in accordance with the instructions of the

Disclosing Party.

**Article 7 (Execution of Proof of Concept or Joint R&D Agreement)**

Following the execution of this Agreement, Parties A and B shall make the greatest efforts possible to move into a proof of concept (PoC) phase or a research and development (R&D) stage, and to execute a PoC or a joint R&D agreement. Party B shall notify Party A whether or not it wishes to enter a PoC or joint R&D agreement within two months of effective date of this Agreement (hereinafter the "Notification Deadline"). However, the Parties may postpone the Notification Deadline upon consultation between them and provided there is an appropriate reason.

**Article 8 (Compensation for Damages)**

If a Party breaches this Agreement, said Party shall be liable for damages (including reasonable attorneys' fees) incurred by the other Party.

**Article 8 (Alternative option: Penalty)**

If a Party breaches this Agreement, said Party shall pay a penalty of 10 million yen to the other Party. However, if the value of damages incurred by the other Party exceeds said penalty amount, such excess amount shall also be paid.

**Article 9 (Injunction)**

If either Party breaches or is likely to breach this Agreement, the other Party may seek an injunction against such an act, and request measures to prevent damage and restore confidence.

**Article 10 (Term of Agreement)**

This Agreement shall be in effect for a term of one year from the date of execution hereof. However, the provisions of this Agreement (except the text of this article) shall apply for a period of three years after the expiration or termination of this Agreement to Confidential Information disclosed during the term.

**Article 11 (Governing Law)**

Disputes arising out of or in connection with this Agreement shall be governed by and in accordance with the laws of Japan.

**Article 12 (Jurisdiction)**

The Parties hereto shall submit to the exclusive jurisdiction of the \*\* District Court, as the court of first instance, for any disputes arising out of or in connection with this Agreement.

**Article 12 (Alternative option 1: Mediation of Disputes)**

(1) To settle an intellectual property dispute arising out of or in connection with this Agreement, a request for mediation shall first be filed with the [Tokyo, Osaka] District Court.

(2) If an agreement is not reached through the mediation specified in the preceding paragraph, the Parties hereto shall submit to the exclusive jurisdiction of the district court set forth in the preceding paragraph as the court of first instance.

(3) For disputes arising out of or in connection with this Agreement other than those specified in paragraph (1), the Parties hereto shall submit to the exclusive jurisdiction of the district court set forth in paragraph (1), as the court of first instance.

**Article 12 (Alternative option 2: Arbitration)**

All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration in (name of city), in accordance with the arbitration rules of (name of arbitration body).

**Article 13 (Settlement through Consultation)**

Any matter not stipulated herein or any question arising out of or in connection with this Agreement shall be settled through consultation between the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by placing their signatures and seals thereon, and each Party shall keep one copy of the originals. To execute this Agreement electronically, the Parties hereto shall make an electromagnetic record of this Agreement in duplicate, place their electronic signatures thereon, and each Party shall keep the record.

(Date)

Party A:

Party B:



- Other clauses that can be added optionally

**Article \*\* (Optional Provision: Onsite Inspection)**

If a Party has a reasonable basis for believing that the other Party is in breach of this Agreement, the former Party may, after notifying the latter Party of points to be inspected and a schedule for the inspection, enter and inspect the relevant facilities, to a reasonable extent and in a reasonable manner, to check how Confidential Information is being managed. The latter Party shall cooperate with said inspection to the extent it is reasonable.

**Article \*\* (Optional Provision: Ownership of Intellectual Property Rights)**

Any intellectual property rights, including patent rights, utility model rights, layout-design exploitation rights, design rights, copyrights, trademark rights etc. (hereinafter collectively the "Intellectual Property Rights") that arise in relation to Confidential Information shall belong to Party A.