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Proof of Concept Agreement  
(New Materials)

This Agreement is made between Company X (hereinafter "Party A") and Company Y (hereinafter "Party B") to undertake a proof of concept (PoC) study to determine whether the new heat-dissipating material  $\alpha$  developed by Party A can be introduced or applied in an automobile headlight cover that the Parties are jointly developing.

NOW IT IS HEREBY AGREED as follows:

**Article 1 (Purpose)**

The purpose of this agreement is to set forth the rights and obligations of Parties A and B in conducting a technical verification (hereinafter the "Verification") to decide whether or not to conduct joint research and development about introducing or applying a "Technology" in a "Product" (as specified below):

Technology: New heat-dissipating material  $\alpha$  developed by Party A

Product: Automobile headlight cover

**Article 2 (Definitions)**

As used herein, the following terms shall have the following meanings:

(i) Verification

A verification concerning the introduction or application of Party A's Technology specified in Article 1 above, the details of which are given in Exhibit \*\*.

(ii) Report

A report on the Verification submitted by Party A to Party B, the contents of which are given in Exhibit \*\*.

(iii) Intellectual Property Right

A right specified by Article 2 (2) of the Intellectual Property Basic Act in Japan or by corresponding legal provisions in other countries.

### **Article 3 (Verification)**

(1) Party B shall ask Party A to conduct the Verification and Party A shall accept this request.

(2) Party A shall provide Party B with the Report within three weeks after executing this Agreement.

(3) The checking of the Report shall be considered completed when Party B notifies Party A that the Report has been checked or Party B raises no objection by clearly stating a specific reason in writing within one week after the receipt of the Report. Upon completion of the checking of the Report, Party A's obligation to conduct the Verification shall be considered fulfilled.

(4) Party B may ask Party A to modify the Report only if Party B raises an objection within one week after the receipt of the Report, as specified in the preceding paragraph.

(5) If Party B makes a request for modification of the Report in accordance the preceding paragraph, Party A shall immediately modify and submit the Report again to Party B, who shall check the resubmitted Report. Paragraphs (3) and (4) of this article shall apply mutatis mutandis to the checking of the resubmitted Report.

### **Article 4 (Fee for Commission)**

The commission fee shall be \*\*0,000 yen (net of tax), and Party B shall transfer the fee all at once by bank transfer to the account designated by Party A within 10 business days after executing this Agreement. The remittance charge shall be borne by Party B.

### **Article 5 (Party A's Obligations)**

(1) Party A shall be under an obligation to conduct the Verification with the due care of a prudent manager.

However, Party A shall have no obligation to start the Verification and shall incur no liability in this respect until the payment is received as specified in the preceding article.

(2) Party A does not guarantee that a certain result based on the Verification will be achieved

or a particular outcome will be produced.

#### **Article 6 (Conclusion of Joint R&D Agreement)**

While in the PoC phase, Parties A and B shall make the greatest efforts possible to go on to a joint research and development (R&D) phase and to conclude a joint R&D agreement. Party B shall tell Party A whether or not it will enter a joint R&D agreement within two months after completing the checking of the Report as specified in Article 3 (3) above.

#### **Alternative option: Additional Fee for Commission If Joint R&D Agreement Not Concluded**

If Parties A and B do not conclude a joint R&D agreement within four months after completing the checking of the Report as specified in Article 3 (3) above, Party B shall pay \*\*0,000 yen (net of tax) to Party A as an additional fee for the commissioned Verification, within five months after the said completion of the checking of the Report.

#### **Article 7 (Party B's Obligations)**

(1) Party B shall provide, disclose or lend (hereinafter collectively "provide") documents, data, equipment, facilities or otherwise provide cooperation as reasonably needed for the Verification.

#### **Additional option: Party B's Responsibility for Provision of Documents etc.**

(2) Party B shall guarantee that it is duly authorized to provide documents, data, equipment, facilities etc. to Party A, as specified in the preceding paragraph, and such provision is not against the law.

(3) If there is an error in the documents or data provided by Party B to Party A or there is a delay in the provision, Party A shall not be liable for any consequence of such an error or delay, e.g. a delay in the Verification, a defect in the Report (including "non-conformity to contractual terms" specified by law).

#### **Article 8 (Handling of Confidential Information)**

(1) Either Party (hereinafter the "Receiving Party") shall keep "Confidential Information" and shall not disclose or leak it to a third party without obtaining prior consent in writing or electronically (hereinafter collectively "in Written Form") from the other Party (hereinafter the "Disclosing Party"). As used herein, "Confidential Information" refers to any data or information disclosed by the Disclosing Party to the Receiving Party for the purpose of the

Verification, whether in writing, orally, by the use of an electromagnetic medium or any other type of disclosure method or means, regardless of whether this Agreement has already been executed, as well as to information acquired through the Verification (including information in the Report), and information contained in materials, devices, other tangible objects (including those listed in Exhibit \*\*).

(2) Notwithstanding the preceding paragraph, such information as specified in one of the following shall not be considered confidential:

- (i) Information the Receiving Party already owns at the time of the disclosure,
- (ii) Information the Receiving Party legitimately obtains from a third party, with no obligation of confidentiality, after the disclosure,
- (iii) Information the Receiving Party gains or creates by itself, 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.

(3) The Receiving Party may not use, reproduce or modify Confidential Information for any purpose other than conducting the Verification, without obtaining prior consent in Written Form from the Disclosing Party. Confidential Information may only be used, reproduced and modified to the extent reasonably necessary for the conduct of the Verification.

(4) The Receiving Party may not analyze or evaluate the composition or structure of Confidential Information or perform a similar action without obtaining prior consent in Written Form from the Disclosing Party.

(5) The Receiving Party may only disclose Confidential Information to its directors and employees (hereinafter collectively the "Directors") who need to know it in order to conduct the Verification. If disclosed, the Directors shall be placed under the same obligation as that of the Receiving Party specified herein during and after the period of employment.

(6) 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 it is necessary to disclose it as required by law,
- (ii) If it is necessary to disclose it as 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.

(7) Notwithstanding the paragraphs (1) and (3) to (5) of this article, either of the Parties hereto may disclose the following fact to a third party without prior consent of the other Party:

The fact that Parties A and B have started the Verification.

(8) Upon written request from the Disclosing Party, the Receiving Party shall immediately destroy Confidential Information (including all reproductions or modifications thereof) in its possession or disclosed to a third party or return it to the Disclosing Party on its own and at its expense, as instructed by the Disclosing Party, regardless of whether this Agreement is still or no longer in force.

(9) When the Disclosing Party requests the disposal of Confidential Information, the Receiving Party shall immediately dispose of the media that contain Confidential Information and provide a document proving the fulfilment of the Receiving Party's obligation to dispose of the said information, as instructed by the Disclosing Party.

(10) The Receiving Part shall make sure that the disclosure of Confidential Information does not allow the Disclosing Party's Intellectual Property Rights to be assigned, transferred or licensed, unless otherwise specified herein.

(11) This article represents the entire and complete agreement between the Parties with respect to the subject matter of this article, and shall supersede all other suggestions and comments concerning the subject matter of this article, whether written or oral, communicated between the Parties.

(12) Parties A and B shall agree that Confidential Information specified in the Non-Disclosure Agreement signed by the them on (date) shall also be handled as Confidential Information under this article.

(13) The provisions in this article shall continue in force for a period of five years after the expiration or termination of this Agreement.

#### **Article 9 (Intellectual Property Rights Related to Report etc.)**

(1) All Intellectual Property Rights that arise in connection with the Report or in the course of the Verification shall belong to Party A, unless previously held by Party B or a third party.

(2) Party A shall permit Party B to use, reproduce and modify the Report to the extent necessary for Party B to conduct the Verification. In this case, Party A shall not enforce its moral rights.

#### **Additional option: Prior Notification of Application Filing**

When filing an application for a patent, utility model, layout-design exploitation, design, or trademark right, as an Intellectual Property Rights set forth in paragraph (1) of this article, Party A shall notify Party B of a brief summary of the application in Written Form, in advance.

#### **Additional option: Feedback**

If Party B provides Party A with a suggestion or advice in the course of the Verification, Party A may use it without charge for improvement of its products in the future.

#### **Article 10 (Compensation for Damages)**

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

(2) The total amount of damages shall be not more than the amount of the commission fee specified herein, unless the loss or damage is caused by the breaching Party's willful act or gross negligence.

#### **Article 11 (Injunction)**

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

#### **Article 12 (Termination)**

(1) Either Party may immediately cancel all or part of this Agreement without sending the other Party a letter of demand, in the event of any of the following:

- (i) If the other Party is in material breach of this Agreement,
- (ii) If the other Party admits its inability to pay debts generally as such debts become due, or if a petition is filed by or against the other Party for the institution of proceedings for bankruptcy, civil rehabilitation, corporate reorganization, or special liquidation, as well as for auction sale of the other Party's assets,
- (iii) If the other Party has its transactions suspended by a clearinghouse, or
- (iv) If there are other material grounds, comparable to those in the preceding items, that make it difficult to continue this Agreement.

(2) Either Party may cancel all or part of this Agreement if the other Party breaches any of the provisions hereof and fails to cure such default within a reasonable period after its receipt of a letter of demand.

**Example of Change of Control (COC) clause as grounds for termination:**

- (v) If there is a substantive change in the ownership of either Party due to a merger, exchange or transfer of shares, corporate divestiture, transfer of business or a significant change in the shareholding structure, stakes of which account for over one \*th of the voting power.

**Article 13 (Term of Agreement)**

This Agreement shall be effective from the date of execution hereof until the day on which the checking is completed as specified in Article 3 (3) above.

**Article 14 (Survival)**

The provisions in the following articles shall survive the expiration or termination of this Agreement: paragraph (2) of Article 5 (Party A's Obligations), Article 6 (Conclusion of Joint R&D Agreement), paragraphs (2) and (3) of Article 7 (documents etc. provided by Party B to Party A), Articles 9 (Intellectual Property Rights Related to Report etc.) to 11(Injunction), and Articles 14 (this article) to 17 (Settlement through Consultation).

**Article 15 (Governing Law)**

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

**Article 16 (Jurisdiction)**

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

**Article 16 (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) Except as specified in the paragraph (1), the Parties hereto shall submit to the exclusive jurisdiction of the district court set forth in the paragraph (1), as the court of first instance, in respect to disputes (including IP disputes in court) arising out of or in connection with this Agreement.

**Article 16 (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 17 (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 both 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 \*\* (Additional option: Recommission)**

(1) Party A may recommit part of the Verification to a third party (hereinafter the "Subcontractor") if Party B gives prior consent in Written Form. To refuse to give the said consent, Party B needs to have reasonable grounds for the refusal.

(2) When recommitting part of the Verification to the Subcontractor in accordance with the preceding paragraph, Party A shall place the Subcontractor under the same obligation as specified herein, with which Party A itself must comply.

(3) Party A shall be held liable for any loss or damage incurred in the course of the Verification conducted by the Subcontractor in the same manner as in the case of the Verification conducted by Party A itself, unless it is due to a cause attributable to Party B. However, Party A shall not be liable in connection with the Verification for which the Subcontractor is designated by Party B, unless the loss or damage is caused by Party A's willful act or gross negligence.

**Article \*\* (Additional option: Amendment to Agreement)**

If it becomes necessary to amend the terms of this Agreement such as the Verification period and the commission fee, due to an unexpected increase in the number of items to be verified in the course of the Verification, for example, either Party shall send a notice to the other Party in Written Form and make a proposal to hold a consultation. After the said proposal, both Parties shall immediately start discussing whether or not to amend the terms of this Agreement and the details of, if any, amendment to be made.

(2) To amend all or part of this Agreement through the consultation in the preceding paragraph, Parties A and B shall execute an amendment agreement in which the said amendment is specified.

**Article \*\* (Additional option: No Assignment)**

Either Party shall not allow a third party to succeed to its contractual status hereunder, assign or transfer part or all of its rights and obligations hereunder to a third party, or pledge them as collateral without obtaining prior consent in Written Form from the other Party

**Article \*\* (Additional option: Late Charge)**

If either Party is in arrears with payment required by this Agreement, this Party shall pay \*\*% per annum of the unpaid amount as a late charge for a period from the day following the due date until the day on which the payment is made.

(Exhibit \*\*)

### Verification (Article 2 (1) of Agreement)

The general procedure for conducting the Verification is described below. If there is any conflict or inconsistency between this Exhibit and the text of the model Agreement, this Exhibit shall prevail.

(1) Party B shall provide Party A with drawings of the Product (automobile headlight cover), information on the product specifications, target specification values such as heat-dissipation performance that are expected to be achieved, and other information needed for the Verification.

(2) Party A shall put forward a detailed plan for the Verification using the information provided by Party B. The detailed plan shall include the following: \*

- Details (shape, dimensions etc.) of a test specimen that is made by molding the headlight cover material, to which the new material  $\alpha$  is added.
- Items to be tested on the specimen (including characteristics of heat-dissipation, mechanical strength and fatigue).
- Other specific matters, if any, which are included in response to a request from Party B.

(3) Party A shall conduct the Verification in accordance with the detailed plan and deliver the Report to Party B. Upon receipt of the Report, Party B shall check the Report promptly and send a notification that includes the following information within a reasonable period:

(a) Party B's decision whether or not to execute a joint R&D agreement (Basically, the Parties shall proceed to a joint R&D phase if the evaluation results achieve an initially-anticipated level.)

(b) If not, the reasons for not proceeding to a joint R&D phase (Specific reasons, e.g. a characteristic that needs to be improved, shall be provided.)

(c) Results (such as raw data) of evaluation of the following items (including heat-dissipation characteristics) made by Party B:

\* If the Parties have already completed (1) and (2) above under the Non-Disclosure Agreement, the detailed plan shall be attached as an exhibit.