

Terms and Conditions for the 3rd International Announcement of Opportunity for Hayabusa Sample Investigation

This agreement is made between the Japan Aerospace Exploration Agency (hereinafter referred to as "JAXA"), established under the provisions of the Japan Aerospace Exploration Agency Law of December 13, 2002, represented by its President and having its principal office at 7-44-1 Higashimachi, Jindaiji, Choufu-shi, Tokyo, Japan, and the Research Organization (hereinafter referred to as the "Research Organization") that submitted the application form for this agreement to JAXA, hereinafter collectively referred to as "the parties." Recognizing that the Muses-C (hereinafter referred to as "Hayabusa") was launched by JAXA from Japan in May 2003 and returned to Earth in June 2010, recognizing that JAXA shall provide a sample of the asteroid Itokawa brought back by Hayabusa, recognizing that JAXA issued the Announcement of Opportunity (hereinafter referred to as "AO") in January 2015, the Research Organization submitted a proposal in response to the AO; and recognizing that JAXA has selected that proposal, the parties hereto agree as follows.

1. Definitions

As used in this agreement, the following terms shall have the meanings indicated.

"Hayabusa" consists of the asteroid explorer plus all of the instruments on board.

"Hayabusa sample" means the particles of the asteroid Itokawa brought back by Hayabusa.

A "PI" is the person who has been selected to perform these AO activities and who belongs to the Research Organization, and whose name is shown on the Work Plan; The "Co-Investigator" (CI) is the person who supports the PI in performing the research defined in this agreement with approval by the Research Organization and notification to JAXA.

"Research" is defined in the AO and further detail is provided in the Work Plan.

"Research Results" means the results derived from the implementation of this AO.

2. Purpose and Scope

The purpose of this agreement is to establish the terms and conditions under which the Research Organization shall conduct the AO activities. The Research is described in the Work Plan.

3. Period of Performance

This agreement shall come into force upon issuance of a confirmation sheet prescribed by JAXA and shall continue in effect until March 31, 2014, unless terminated as described in Article 22. In spite of the foregoing, Articles 9, 10, 11, 12, 18, 19, 20, 21, 25, and 26 shall remain in force after the expiration of this agreement.

4. Affiliation

1. If the Research Organization intends to add CIs, the Research Organization shall first obtain the consent of JAXA for such personnel. The Research Organization shall submit to JAXA a list of such candidate CIs in order to obtain JAXA's consent. If JAXA does not agree to the proposed list of candidate CIs, then JAXA will send notification to the Research Organization within seven (7) days of receiving the list of candidate CIs.
2. The Research Organization shall supervise the PIs and CIs engaging in the Research Projects and shall ensure that all PIs and/or CIs engage in the Research Projects in accordance with the terms and conditions of this agreement. For avoidance of doubt, with regard to this agreement, the PIs and CIs shall not be deemed a third party.
3. If a PI dies, retires from the Research Organization, takes a leave of absence from work, or is no longer engaged in the Research Projects, the Research Organization shall immediately notify JAXA, and JAXA and the Research Organization may terminate this agreement; provided, however, if the Research Organization designates a researcher who belongs to the Research Organization as the PI's successor, the Research Organization can continue AO activities by notifying JAXA and the succeeding researcher becoming the new PI. If JAXA does not agree to the proposed new PI, then JAXA will notify the Research Organization within fourteen (14) days of receiving the notification proposing the new PI.

5. JAXA's Responsibilities

JAXA will make reasonable efforts to:

- a) Prepare a list of Hayabusa samples and make it available on the website and
- b) Lend the PI the Hayabusa sample that the PI requested.

6. Research Organization's Responsibilities

The Research Organization will make reasonable efforts to:

- a) Develop a work plan for the AO activity providing for the Hayabusa sample to be returned to JAXA soon after the AO activity is completed,
- b) Conduct and complete AO activities in accordance with the work plan,

- c) Establish an adequate security system for the Hayabusa sample,
- d) Deliver the Research Results as a summary by the end of the performance period as described in Article 3, and
- f) Account for the condition of the Hayabusa samples prior to returning them to JAXA.

7. Rights and Obligations Related to Hayabusa Samples

- a) The PI shall not use the Hayabusa sample for any other purposes than those defined by the work plan.
- b) The PI shall keep the sample as unpolluted as possible.

8. Transportation of Hayabusa Samples

- a) JAXA will use commercial transportation for the Hayabusa sample and will accept scientific risks such as X-ray inspection, opening of the container in the airport, and its loss.
- b) If the PI cannot accept these risks, the PI is entitled to propose different transportation in the work plan.

9. Transfer of Technical Data

Except as otherwise provided in this Article, each party under this agreement shall transfer all technical data considered necessary to fulfill the receiving party's responsibilities under this agreement, to the extent feasible.

The parties will undertake to handle expeditiously any request for technical data presented by the other party for the purpose of this agreement. Neither party shall have any right to require the other party to transfer any data if such transfer would violate the laws or regulations of the country having jurisdiction over such transfer.

The furnishing party shall mark with a notice or otherwise clearly indicate any technical data that are to be protected as proprietary or for export control purposes. Such a notice shall indicate any specific conditions regarding how such technical data may be disclosed or used by the receiving party including, for export control (a) that such technical data shall be used or disclosed only for fulfilling the receiving party's responsibilities under this agreement, and, for proprietary rights (b) that such technical data shall not be disclosed, duplicated, or used by persons or entities other than the receiving party, or for any other purpose, without the prior consent of the furnishing party.

Each party shall observe any clearly indicated limitation on the handling of transferred technical data.

According to the directives of the furnishing party, the receiving party shall return or otherwise dispose of technical data provided under the Agreement upon completion of the activities specified under the Agreement.

10. Intellectual Property Rights

If the Research Organization solely generates Potential Intellectual Property Rights in the course of the Research Projects (Solely-Owned Intellectual Property Rights), the party shall notify the other party immediately. In this case, the Research Organization may take steps to apply for registration of the resulting Intellectual Property Rights as solely-owned ones at its own expense, provided that it shall obtain prior confirmation of the other party. For the avoidance of doubt, only if Potential Intellectual Property Rights are generated or created by the Research Organization's sole work and sole funding shall such Potential Intellectual Property Rights be deemed to be solely generated or created by the Research Organization.

11. Usage of Research Results

The Research Organization solely owns the Research Results and may utilize them exclusively. However, if JAXA wishes to utilize the Research Results, JAXA shall obtain written permission from the Research Organization in advance.

12. Publication of Research Results

1. The results obtained through the performance of these AO activities by the Research Organization will be made available to the general public in a timely manner. If the Research Organization intends to publish the Research Results, the Research Organization shall inform JAXA prior to submission.
2. The Research Organization shall add a statement to the publication that indicates as appropriate that the Research Results have been obtained through the cooperation between the Research Organization and JAXA.

13. Language

All communications between the Research Organization and JAXA under this agreement shall be in English.

14. Force Majeure

Neither party is liable for failure, delay, or suspension in performing its part of this agreement when such failure is due to reasons including, but not limited to, fire, war,

inevitable accident, act/policy of government, and legal restrictions beyond the control of the party.

15. Taxes and Customs

If any customs fees and/or taxes of any kind are levied on the transactions necessary for the implementation of this agreement, such customs fees and/or taxes shall be borne by the party of the country levying the fees and/or taxes.

16. Funding

There will be no exchange of funds under this agreement. Each party shall bear the costs necessary to fulfill its own responsibilities under this agreement.

17. Limitations on Liabilities

JAXA and the Research Organization each agree to waive any claim against the other with respect to any injury or death of its employees or the employees of its related entities, or with respect to damage of any kind, or any loss of its own property or property of its related entities arising out of activities under this agreement (hereinafter referred to as "Damages"), excepting such Damages which arise through willful misconduct and gross negligence and excepting intellectual property rights.

18. Privacy Policy

JAXA will not use personal information including name, affiliation, and email address other than for implementing this AO. JAXA also may provide this information to JAXA's contractor supporting this AO. In that case, JAXA will ensure that the contractor will adhere to the same privacy policy.

19. Inventions and Patents

Nothing in this agreement shall be construed as granting or implying any right to, or interest in, patents owned by or inventions that are independently developed by the parties to the agreement or their contractors or subcontractors.

20. Confidentiality

1. In this agreement, "Confidential Information" means any information that a party discloses or presents in writing or by other media to the other party in the course of these Research Projects. However, Confidential Information does not include the following:

- a) Information that is already known to the public when disclosed by the disclosing party;
 - b) Information that becomes known to the public after disclosure by the disclosing party without intentional misconduct or negligence of the receiving party;
 - c) Information that the receiving party already had before the disclosure by the disclosing party;
 - d) Information that the receiving party acquires from a duly authorized third party not subject to confidentiality obligations;
 - e) Information that the receiving party independently develops without utilizing information obtained from the disclosing party;
 - f) Information with prior written consent of the disclosing party for disclosure and publication; or
 - g) Information that is required to be disclosed by applicable laws, judgment, or order of a competent court. In this case, the receiving party shall promptly notify the disclosing party of the necessity of disclosure.
2. The receiving party shall keep the Confidential Information secret, and shall not disclose or divulge any Confidential Information to a third party without the prior written consent of the disclosing party.
3. The confidentiality obligation under this Article shall remain effective for a period of five (5) years after the termination of the Agreement. However, this period of keeping confidentiality may be extended or shortened by mutual agreement.

21. Government Approvals

Each party shall obtain such permits, licenses, and other government authorizations as required for it to perform its responsibilities under this agreement, and shall comply with all applicable laws and regulations.

22. Suspension

If the Research Organization fails to meet the purposes of this agreement or to comply with the terms of this agreement, JAXA may suspend execution of this agreement, in whole or in part, pending corrective action by the Research Organization or a decision by JAXA to revoke this agreement.

23. Termination

1. Either party may terminate the Agreement

- a) When the other party commits a dishonest and/or inequitable act that irreparably

harms the mutual trust between the Parties, provided that the breaching party fails to offer any effective and satisfactory remedial measures within seven (7) days after receiving a demand for corrective action from the harmed party;

b) When the other party violates any of the terms and conditions of this Agreement, provided that the breaching party fails to offer any effective and/or satisfactory remedial measures within seven (7) days after receiving a demand for corrective action from the harmed party; and

c) When the Parties consent to termination.

2. Upon termination of the Agreement, the Research Organization shall promptly deliver to JAXA all work including, but not limited to, all work in progress and all work that is completed and otherwise ready for delivery.

3. The preceding paragraph shall apply to termination upon the occurrence of the events contemplated in Article 4, Paragraph 3.

24. Special Agreement

Any supplement, modification, or amendment of this Agreement shall only be binding if made under a mutual written agreement between the Parties which makes specific reference to this Agreement.

25. Dispute Resolution

The Parties agree to make their best efforts to solve amicably any dispute, controversy, or difference arising out of, in connection with, or resulting from this Agreement.

26. Arbitration

All disputes that cannot be amicably settled by the method defined in the previous paragraph hereof will be settled by arbitration in Tokyo in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association.

STATEMENT OF AGREEMENT

I, the undersigned, have read and fully understood the above “Terms and conditions for the 3rd International Announcement of Opportunity for Hayabusa Sample Investigation” and agree to abide by the rules contained therein.

_____ (Signature)

_____ (Full Name in Block Letters)

_____ (Full Name of Organization)

_____, 2015

MONTH DAY