

General Contractual Conditions for the Joint Research with the GOSAT Data

The Japan Aerospace Exploration Agency (JAXA), the National Institute for Environmental Studies (NIES), and the Ministry of the Environment (MOE) of Japan (hereinafter referred to collectively as the “Three Parties”) previously issued research announcements for the greenhouse gases observing sensors onboard the satellite (hereinafter referred to as the “RA”), aiming to further enhance and exploit the outcomes obtained from the Greenhouse gases Observing SATellite (GOSAT) Project, and in line with this aim to solicit research proposals with regard to the use of any products as defined in the GOSAT Data Policy (hereinafter referred to as the “GOSAT Data”). The Three Parties have adopted those proposals which were evaluated as being appropriate by the RA Selection and Evaluation Committee (hereinafter referred to as the “Committee”) from among those which were submitted. At the time of drafting of this document, in acknowledgment that many of those proposals which were previously approved are nearing the end of their contract period, the Three Parties shall herein provide the general contractual conditions for the joint research with the GOSAT Data for the renewal of contracts for those researches which are currently ongoing, and with the additional aim of further soliciting new research proposals.

The Research Organization (hereinafter referred to as the “RO”) is an organization to which the Principal Investigator (hereinafter referred to as the “PI”) is affiliated, and whose research proposal has been approved. The Three Parties and the RO, each of which is hereinafter referred to as a “Party” or both of which are collectively as “Parties”, hereby agree to and execute accordingly this contract (hereinafter referred to as the “Contract”) to carry out Joint Research (hereinafter referred to as the “Joint Research”) as provided for hereunder. In the case that the PI is not affiliated to any such RO, references to the “RO” should hereunder be substituted with “PI”.

Article 1 (Definitions)

1.1 For the purposes of the Contract, the following terms shall have the meanings as provided for below.

1.1.1 The “Research Results” shall mean any outcomes obtained in the course of the execution of the Joint Research associated with the Contract. This shall refer to any deliverables, including reports, charts, and data acquired in the course of the execution of the Joint Research using GOSAT Data by the PI, in line with the work plan submitted with the proposal, or technical outcomes and scientific findings which are congruent with the purposes of the Joint Research, including but not limited to inventions, devices, designs, copyrighted literary works, and “know-how”, which are indicated as Research Results in documents including, but not limited to, research reports prepared in accordance with the provisions of Article 6 hereof.

1.1.2 The “Intellectual Property Rights” shall refer to the rights stipulated in Article 2.2 of the Japanese

Intellectual Property Basic Law.

1.1.3 The “Interim Evaluation” shall refer to the evaluation by the Three Parties of the Research Results on the basis of the Progress Report and Interim Report on Research Results as compiled and submitted by the RO in accordance with Article 6.2 hereof.

1.2 For the purpose of the Contract, the “Invention(s)” shall specifically include inventions subject to patent rights, devices subject to utility model rights, creations subject to design rights, trademark rights, circuit layout access rights, and copyrighted literary work rights (including programs), as well as knowledge or skills designated as constituting “know-how” as defined in Article 7 hereof.

1.3 For the purposes of the Contract, the “Implementation” of the Intellectual Property Rights shall refer to any actions stipulated by Article 2.3 of the Patent Law; Article 2.3 of the New Utility Model Law; Article 2.3 of the Design Law; Article 2.3 of the Trademark Law; and Article 2.3 of the Law Concerning Semiconductor Integrated Circuit Layouts; the creation of derivative works as stipulated by Article 2.1.11 of the Copyright Law; and actions stipulated by Articles 2.1.15, Articles 2.1.19 and 2.1.20 of the same law as regards the implementation of “know-how”.

1.4 For the purpose of the Contract, the “PI” is the representative investigator who carries out the research based on his/her submitted and approved research proposal in the RA scheme. The “Co-Investigator(s)” (hereinafter referred to as the “Co-I”) indicates investigators who cooperate in the research activities represented by the PI and shall be approved by the RO and registered by the Three Parties. The Co-I is required to be sufficiently qualified in the relevant research field, and either have obtained a doctorate degree in a relevant field or currently be in the latter stages of attendance in graduate school doctoral course, or have experience or qualifications equivalent to or exceeding the aforementioned. The “RA Investigators” is the collective term to indicate the PI, the Co-I, and other supporting investigators, including students, research assistants, and postdoctoral fellows whose involvement has been conveyed by the RO and approved by the Three Parties.

Article 2 (Roles and Responsibilities in the Joint Research)

2.1 The Three Parties shall undertake the tasks defined in the following provisions in conjunction with the Joint Research.

2.1.1 Acceptance of data processing requests as submitted by the RO to the extent which has previously been acknowledged and approved and provision of the requested GOSAT Data to the RO

2.1.2 Provision of information on mission control data, etc. necessary for the RO to carry out its research activities under the RA scheme, to the extent possible

2.1.3 Evaluation of the Progress Report and Interim Report of Research Results in the Interim Evaluation and notification of the results of this evaluation to the RO

2.1.4 Organization of research report meetings and other assemblages of relevant persons

necessitated in the course of the execution of the Joint Research

2.2 The RO shall undertake the tasks defined in the following provisions in conjunction with the Joint Research.

2.2.1 Implementation of the research in accordance with the work plan for the Joint Research

2.2.2 Submission of the Progress Report and Interim Report of Research Results (in principle once a year), and the Final Report of Research Results to the Three Parties

2.2.3 The PI or the Co-I's participation in the research report meetings and assemblages of relevant persons necessitated in the course of the execution of the Joint Research organized by the Three Parties

Article 3 (Term of the Joint Research)

The Contract for the Joint Research shall enter into force when the Three Parties acknowledge the application of the RO based on the application form. The term of the Joint Research under the Contract shall apply from the day of the signature of the last authorized representative of the Parties to the Contract and continue for a maximum of four (4) years under the condition that the GOSAT ground system remains operational. However, in the case that the Joint Research is evaluated as not being eligible for extension approval under the Interim Evaluation, it may be possible that the Joint Research will be terminated. Conversely, in the case that the RO wishes to extend the term of the Joint Research, the RO may indicate its intention to apply for such an extension to the Three Parties, and should such application be approved, the Joint Research will be extended with the same conditions to a maximum of three (3) additional years.

Article 4 (Investigators to be Engaged in the Joint Research)

4.1 The RO shall ensure that the PI, designated in the research proposal, participates in the Joint Research.

4.2 The Co-I is mutatis mutandis bound by the articles governing the RO in the Contract, and the PI shall be responsible for taking every possible measure to ensure that the Co-I observes the stipulations provided for in the Contract.

4.3 In the case that the PI intends to add an investigator as a Co-I, the PI shall apply to the Committee in writing for an approval for such by the Three Parties.

4.4 In the case that the PI intends to solicit the participation of an investigator, who is not registered as such by the Three Parties, in the Joint Research as an RA Investigator, the PI shall notify the Three Parties of such in writing and take the necessary measures to ensure that the new RA Investigator observes the stipulations provided for in the Contract.

4.5 The RA Investigators, excluding the PI and the Co-I, may access the GOSAT Data under the supervision of the PI and the Co-I for tasks necessitated in the fulfillment of the purposes as defined

in the research proposal.

Article 5 (Research Expenses)

The Three Parties and the RO shall individually bear expenses incurred in the course of performing the respective tasks associated with the Joint Research.

Article 6 (Preparation of Research Result Report)

6.1 The RO shall collate and organize the Research Results produced during the term of the Joint Research in a written report (the Final Report of Research Results) in English and submit it to the Three Parties on completion of the Joint Research.

6.2 The RO shall in principle submit the Progress Report and Interim Report of Research Results once a year in English or in Japanese, to the Three Parties, for the purpose of the Interim Evaluation of the Research Results. Notwithstanding the foregoing, if the research term shall be completed within a year after the Joint Research is agreed, such submission is not necessary.

Article 7 (Designation and Definition of “Know-How”)

7.1 The Three Parties and the RO shall promptly indicate any items, including knowledge, skills or facilities which are deemed as constituting “know-how”. Specifically, know-how shall refer to any faculty or skill in a particular activity specifically relevant to the execution of the Joint Research and which is attained in the course of the execution of any aspect thereof (hereinafter referred to as the “Know-How”), from the items stated as Research Results in the research reports provided for in the previous provision, and agreement on such shall be reached by mutual discussion and consensus.

7.2 When indicating items constituting Know-How, the Parties hereto shall clearly stipulate the period over which the indicated Know-How shall be considered confidential (hereinafter referred to as the “Confidentiality Period”).

7.3 The Confidentiality Period as set forth hereinabove shall be determined in consultation between the Three Parties and the RO, whereas it is set, in principle, at five (5) years from the day following the completion of the Joint Research, provided, however, that the Three Parties and the RO may extend or shorten the Confidentiality Period by mutual discussion and consensus agreement.

Article 8 (Transfer of Equipment, etc.)

8.1 The Three Parties and the RO may transfer equipment or commodities necessary for the implementation of the Joint Research into the facilities of any other Party, provided that such transfer is approved by the other Party in advance. When transferring the equipment, etc. the Party responsible for such transfer shall abide by the rules and regulations of the other Party.

8.2 The Three Parties and the RO shall not use the equipment or commodities transferred by the other

Party (hereinafter referred to as the “Transferred Commodities”) for any other purposes than the implementation of the Joint Research.

8.3 In case that the Transferred Commodities are lost or damaged, the Three Parties and the RO, regardless of the cause of such loss or damage, shall promptly notify the other Parties.

Article 9 (Information Exchange)

9.1 The Three Parties and the RO shall mutually provide its own technical documentation or proprietary objects, including but are not limited to, programs, other than the GOSAT Data (hereinafter the same applies), necessary for the implementation of the Joint Research (hereinafter referred to as the “Technical Documents”) free of charge to the other Party, allow the other Party to use the Technical Documents, and may request advice from the other Party as necessary in connection with any such documentation.

9.2 The Three Parties and the RO may not use the Technical Documents as set forth hereinabove provided by the other Party for any other purpose than the implementation of the Joint Research nor disclose them to any third Party not involved in the Joint Research without the other Party’s agreement.

9.3 The Three Parties and the RO shall return or appropriately discard the Technical Documents provided by any of the other Parties, after the expiration of the Contract, according to the instructions given by the other Party.

Article 10 (Provision of and Rights to the GOSAT Data)

10.1 The Three Parties shall provide the RO with the GOSAT Data free of charge, based on Article 2.1.2 hereof, conforming to the stipulations hereunder.

10.1.1 The RO shall be provided with the GOSAT Data to the extent approved for submitting data distribution requests by the Three Parties based on the proposal of the Committee.

10.1.2 The Three Parties shall not be liable for guaranteeing the quality or timely delivery of the GOSAT Data.

10.1.3. The Three Parties shall not be liable for any situation in which the RO is unable to access the GOSAT Data due to an anomaly of GOSAT, operational constraint, or other contingency.

10.2 The RO shall abide by the following provisions with regard to the acquisition and handling of the GOSAT Data to be provided by the Three Parties.

10.2.1 The RO shall be entitled to submit data acquisition requests to the extent predetermined per research theme by the Three Parties based on the proposal of the Committee.

10.2.2 The RO may use the GOSAT Data solely for the purpose of the implementation of the Joint Research.

10.2.3 The RO shall not duplicate all or any portion of the GOSAT Data for any other purpose than data backup, except for duplication of the data to distribute to the RA Investigators, and solely for the purpose of the implementation of the Joint Research.

10.2.4 The RO shall handle the GOSAT Data such that the original data are recoverable in accordance with the provisions of Article 16 “Confidentiality” hereof, and shall not provide or disclose all or any portion of such to any third party not involved in the Joint Research.

10.2.5 When the Contract has expired, the RO shall appropriately store the GOSAT Data provided by the Three Parties.

10.3 The ownership of the GOSAT Data provided by the Three Parties to the RO shall be managed in accordance with the following provisions.

10.3.1 The “Intellectual Property Rights” relating in any way to the GOSAT Data provided to the RO shall belong to the Three Parties.

10.3.2 Notwithstanding the previous provision, in case that the RO modifies the GOSAT Data and creates higher-level value-added data such that the original data is unrecoverable, by means of advanced data processing, in the process of implementing the Joint Research, the ownership of the “Intellectual Property Rights” of such data shall be determined upon consideration of the respective shares equivalent to intellectual contribution by each of the Three Parties and the RO to the data, along with any other contingent factors, in mutual consultation.

Article 11 (Ownership of the Intellectual Property Rights and Application for Rights to Invention(s))

11.1 In the case that any Invention(s) are derived in the course of the implementation of the Joint Research, the Three Parties and the RO shall promptly notify the other Party, and discuss the ownership of the Intellectual Property Rights and the formal application for rights to Invention(s).

11.2 In the case that the Three Parties or the RO is singly and independently responsible for an Invention(s) in the course of the implementation of the Joint Research, the Intellectual Property Rights relating to the Invention(s) shall belong solely to the inventing Party, and said Party may proceed with the application process at its own discretion, provided, however, that said Party obtains approval of the other Party prior to such application. In such case, the cost and expenses associated with the application procedure and the preservation of the rights shall be borne by said Party.

11.3 In the case that the Three Parties and the RO are jointly responsible for an Invention(s) in the course of the implementation of the Joint Research, both Parties shall co-own the Intellectual Property Rights relating to such Invention(s), in proportion to the share of the Intellectual Property Rights as mutually discussed and agreed on. The two Parties shall jointly undertake such actions as necessitated for the application for Intellectual Property Rights in accordance with the separate

agreement regarding joint application to be executed between the Parties hereto. In such cases, the cost and expenses associated with the application procedure and the preservation of the rights shall be borne by both Parties in proportion to their respective portions of such Intellectual Property Rights.

11.4 In the case that the RO intends on ensuring protection regarding its Intellectual Property for the purpose of the Joint Research carried out under the Contract herein, the RO shall provide notice in writing to the Three Parties. The Three Parties shall agree that their approval for the RO to proceed with measures and procedures for the protection of its Intellectual Property will not be unreasonably withheld.

Article 12 (Overseas Application)

12.1 The provisions of the previous Article shall apply also to the application procedure and the preservation of the Intellectual Property Rights in countries overseas.

12.2 In case that the Three Parties and the RO jointly apply for the Intellectual Property Rights to be commonly owned by both Parties, in accordance with the third paragraph of the previous Article, in an overseas country, the two Parties shall sufficiently confer in advance.

Article 13 (Application of the Research Results)

13.1 In the case that the Three Parties or the RO intends to actively apply the Research Results, the Party may do so (or solicit a third party do so to serve the Party's purpose) free of charge and without any obligation to obtain the prior consent of the other Parties, provided that any such use is for the purpose of facilitating its internal research and development, is not intended to generate profits, and is for peaceful ends.

13.2 In the case that the Three Parties or the RO intends to use commonly-owned Intellectual Property Rights, the Party shall obtain the advance consent of the other Party and pay any fees associated with this use as determined in the separate agreement regarding the application of the Intellectual Property Rights to be executed between the Parties hereto, excepting such cases as provided for in the previous provision.

13.3 Observing Article 17 hereof (Disclosure of the Research Result), the Three Parties may use, edit, duplicate or distribute the Progress Report, and Interim Report of Research Results, as well as the Final Report of Research Results submitted by the RO. In such cases, the PI and the Co-I shall not exploit the moral rights of authorship.

Article 14 (Licensing of the Intellectual Property Rights to Third Party)

14.1 In the case that the Three Parties or the RO intends to license commonly-owned Intellectual Property Rights resulting from the Joint Research to a third party, the Party shall obtain the advance

consent of the other Party in writing and both Parties shall discuss and determine the details of licensing conditions.

14.2 In the case that the commonly-owned Intellectual Property Rights of the Parties hereto are licensed to a third party in accordance with the previous provision, the Three Parties or the RO shall collect the license fee as determined in a separate agreement regarding licensing of the Intellectual Property Rights to be executed between the Parties hereto, from the licensed third party. The license fee thus collected shall be distributed between the Three Parties and the RO in proportion to their respective shares of such Intellectual Property Rights.

Article 15 (Partial Transfer of Intellectual Property Rights)

15.1 The Three Parties and the RO may only execute a partial transfer of Intellectual Property Rights resulting from the Joint Research to a designated party, having first consulted with and received the consent of the other Party. Any such transfer shall be executed in accordance with a separate agreement regarding the transfer of Intellectual Property Rights to be executed between the Parties hereto.

15.2 In the case that the Three Parties or the RO intends to relinquish its share of commonly-owned Intellectual Property Rights the relinquishing Party shall first issue advance notification of such intention to the other Parties before completing such transfer, should the other Party so request.

Article 16 (Confidentiality)

16.1 For the purpose of the Joint Research, the “Confidential Information” shall include all information to which any of the following provisions applies.

16.1.1 Documents and tangible products, such as samples, taken from the outcomes obtained in the course of the implementation of the Joint Research, which are indicated as confidential, or any tangible and intangible items that have been identified as being confidential between the Three Parties and the RO in writing.

16.1.2 Any tangible or intangible information disclosed or provided, which is indicated as being of a classified nature by the other Party

16.2 The Three Parties and the RO shall manage the Confidential Information in an appropriate manner and shall not disclose or divulge it to any other party than the investigators who are engaged in the Joint Research, except in the following circumstances.

16.2.1 The Information is already in the public domain at the time of disclosure or at which the Party became aware

16.2.2 The Information became publicly known due to reasons not attributable to the Party after the time of disclosure or at which the Party became aware

16.2.3 Information that can be proven to have already been known to the Party at the time of

disclosure or at which the Party became aware

16.2.4 The Information or contents can be proven to have been obtained by legal means from a third party with appropriate rights and without an obligation to confidentiality

16.2.5 The Information or materials can be proven to have been obtained by the Party independently of the disclosure of any such information by any of the other Party

16.2.6 The Information has been approved for disclosure in writing by the other Party

16.2.7 Information, the disclosure of which is required by a court order or legal authority; if required, the Party subject to such obligation shall promptly notify the other Party of any such requirement

16.3 The obligation to maintain confidentiality based on the previous paragraph shall remain effective for five (5) years after the expiration (including termination) of the Contract, provided, however, that the Three Parties and the RO may extend or shorten the Confidentiality Period based on mutual discussion and agreement.

Article 17 (Disclosure of the Research Results)

17.1 The Three Parties and the RO may disseminate or disclose the Research Results obtained in the course of the implementation of the Joint Research (hereinafter referred to as the “Disclosure of the Research Results”), provided that the obligations set forth in Article 16 above are strictly observed.

17.2 In any case corresponding to the previous provision, the Three Parties or the RO intending to disclose the Research Results (hereinafter referred to as the “Disclosing Party”) shall notify the other Party in writing of any such Disclosure of the Research Results and obtain prior written consent of the other Party in advance. In such cases the notified Party shall not reject such request for approval without justifiable reason. In respect to such notification from the RO to the Three Parties, in principle it shall be made at least thirty (30) days before submission to journals or presentation at conferences.

17.3 If the notified Party becomes aware that the contents to be disclosed have the potential to infringe on its future interests, the Party shall issue a written request to the Disclosing Party for appropriate modification of the contents to be disclosed, and the Disclosing Party shall sufficiently consult with the other Party in regard to such. The Disclosing Party shall not disclose any such contents as outlined above in the notice received from the other Party in accordance with this provision due to the potential of a future infringement of the other Party’s interests, without the express approval of the other Party.

17.4 In the case that the Disclosing Party carries out said Disclosure of the Research Results, that Party shall be required to make explicit the fact that the disclosed Research Results have been obtained in the process of the implementation of the Joint Research and indicate the source of the GOSAT Data.

17.5 The Three Parties and the RO shall be required to notify each other in accordance with the provision of the second paragraph above during the effective term of the Joint Research and also for one additional year from the day following the completion of the Joint Research, provided, however, that the Three Parties and the RO may choose to extend or shorten this period by mutual discussion and agreement.

Article 18 (Mutual Liability for Damage)

The Three Parties or the RO shall not claim for indemnification for any impediment or death that occurs to its staff or damage to or loss of its assets, caused by the other Party in the process of implementation of the Joint Research, unless such impediment or death occurring to its staff, or damage to or loss of its assets has resulted from the intentional malpractice or gross negligence of the other Party.

Article 19 (Temporary Suspension and Restart of the Joint Research)

The RO shall be permitted to temporarily suspend the Joint Research upon consultation with the Three Parties for any of the following reasons listed below, which can be considered as interruptions to the Joint Research beyond the control of the PI or RO. The duration of any such suspension and the timing of the restart of the Joint Research will be also decided upon consultation between the Three Parties and the RO. In such cases, none of the Parties hereto shall claim for any compensation whatsoever.

In the case that the duration of any such suspension exceeds the effective term of the Contract, or that the timing of the restart of the Joint Research cannot be anticipated, the RO shall request the termination of the Contract to the Three Parties, who shall agree with the request in the case of any of the circumstances outlined in Article 20.1.

- (1) Devastating natural disasters such as earthquakes, fires, windstorms, flooding, etc.
- (2) Retirement of the PI
- (3) Long-term hospitalization or medical treatment due to sickness or an accident of the coordinating investigator for the research activity in question
- (4) Parturition, maternity leave, or nursing leave of the coordinating investigator for the research activity in question
- (5) Long-term business transfer or trip to another organization of the coordinating investigator for the research activity in question
- (6) Difficulty to sustain the research system and its environment due to budgetary constraints, etc.
- (7) Difficulty to sustain the research team due to organizational changes in the RO
- (8) Other unavoidable reasons not provided for above which the Committee judges and the Three Parties confirm as constituting circumstances which hinder the effective implementation of the Joint Research

Article 20 (Termination of the Contract)

20.1 The Three Parties and the RO may terminate the Contract in any of the following circumstances:

20.1.1 The Three Parties and the RO mutually agree to termination of the Contract;

20.1.2 Any Party conducts improper or unlawful deeds in the process of executing the Contract and fails to remedy such deeds within seven (7) days from receipt of notice requesting the remediation of any such breach by the other Party; or

20.1.3 Any Party breaches the Contract and fails to remedy such breach within seven (7) days from receipt of notice requesting the remediation of any such breach by the other Party.

20.2 The Three Parties may terminate the Contract in any of the following cases:

20.2.1 The Joint Research is evaluated as not eligible for approval for continuation under the Interim Evaluation; or

20.2.2 The RA scheme comes to an end by mutual agreement of the Three Parties.

20.3 Even should the Contract be terminated in accordance with this Article, the RO shall still be remain obliged to compile all outcomes from the Joint Research performed to this point in time and to submit such in the form of the Final Report of the Research Results to the Three Parties.

Article 21 (Effective Term of the Contract)

21.1 The Contract shall be valid for the research period provided for in Article 3 hereof and effective until the date of expiration. That is, the time of commencement is the date of signature of the last authorized representative of the Three Parties and the RO, while the date of expiration will correspond with the date when the Committee confirms and accepts the Final Report of Research Results as submitted through the RA Office in accordance with Article 6 hereof.

21.2 The provisions of Articles 9, 10.2-3, and 11-15 shall survive after the effective term of the Contract stipulated by the previous paragraph for the effective period for the Intellectual Property Rights stipulated by the respective provisions, and Articles 16 and 17 shall remain valid for the period stipulated by the respective provisions.

Article 22 (Consultation)

In the case that any matter not provided for in the Contract herein, or questions regarding consistency or interpretation of the Contract arise, the Three Parties and the RO shall clarify and resolve any such matters through mutual consultation.

Article 23 (Change of RO)

23.1 The Contract between the RO and the Three Parties shall be automatically terminated when the PI leaves the RO due to his/her transfer to another organization etc.

23.2 For continuation of the RA research, the new RO to which the PI is then affiliated (or the PI himself/herself if he/she does not belong to any organization) and the Three Parties must agree anew to the Contract to carry out the Joint Research.

23.3 During any such subsequent contracting process conforming to that described in the previous section, in the case that the new RO itself or the country in which it is located is deemed as not being congruent with the purposes of the RA or as concerns exist that the GOSAT Data may be used for non-peaceful purposes, the Three Parties reserve the right to reject any subsequent execution of the Contract with the new RO.

Article 24 (Change of PI in Exceptional Circumstances)

In circumstances that the RO wishes to designate another employee as the PI of the RO due to compelling reasons to facilitate the continuation of the Contract, the PI candidate of the RO shall apply to the Three Parties in writing. Should the application be approved by the Committee and confirmed by the Three Parties, the Joint Research between the RO and the Three Parties will be continued with the same conditions continuing to apply.