

**Memorandum of Understanding**  
**for**  
**Cooperation on Research and Development in Support of**  
**Technical Standards**

**THIS MEMORANDUM OF UNDERSTANDING (MOU) IS ENTERED INTO BY,**

**The National Institute of Standards and Technology**, hereinafter referred to as "NIST", a public scientific and technological research organization, having its head office at 100 Bureau Drive, Stop 1070, Gaithersburg, MD 20899-1070 U.S.A. and being represented by Dr. Patrick D. Gallagher, Deputy Director,

**AND**

**The National Institute of Advanced Industrial Science and Technology**, hereinafter referred to as "AIST", a public scientific and technological research organization, having its head office at 1-3-1 Kasumigaseki, Chiyoda-ku Tokyo, 100-8921 Japan and being represented by Dr. Tamotsu Nomakuchi, President,

Both hereinafter referred to as the "Parties" collectively or "Party" individually.

**PREAMBLE:**

WHEREAS, the Parties believe that expansion and development of cooperation between the two organizations will contribute to enhanced scientific and technological cooperation between the United States of America and Japan,

WHEREAS, the Parties recognize that cooperation in research and development related to the development of technical standards between NIST and AIST will bring mutual benefits to the industry of both countries,

WHEREAS, the Parties recognize the benefits accrued from the long standing information exchange on technical standards and conformity assessment between NIST and the Ministry of Economy, Trade and Industry "METI" (in consultation with technical experts from AIST).

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

**Article 1: Purpose**

The Parties intend to pursue cooperation in research and development supporting the

development of technical standards in the fields of, including but not limited to, nanotechnology, energy and environment, biotechnology, and other areas as mutually agreed.

## **Article 2: Action for the Joint Scientific and Technological Cooperation**

1. The Parties will meet regularly and as needed to discuss possible subjects for future cooperation, to review the state of current cooperative projects, and to decide on the joint seminars and the implementation of joint cooperation on priority subjects.
2. The Parties intend to jointly work on the implementation of mutually beneficial activities and cooperative projects. Such cooperation may consist of exchanges of personnel, exchanges of technical information, reference data, exchange visits, and other activities as may be mutually agreed.
3. The Parties intend to enter into project-specific agreements for cooperative scientific and technical activities conducted pursuant to this MOU. Such agreements should include detailed provisions for the conduct of research and other terms as appropriate. (hereinafter referred to as "Joint Research Projects").

## **Article 3: Administrative Unit**

The unit responsible for administration and management of collaboration arrangement established under this MOU will be for NIST the Office of International and Academic Affairs and for AIST the International Affairs Department.

## **Article 4: Confidentiality**

To the extent permitted by the laws applicable to each Party, the Parties shall keep confidential the items defined as "Confidential Information" in the Appendix, and shall not provide or disclose Confidential Information to any third party without the other Party's written consent. Confidential Information shall remain confidential for an additional three (3) years after the termination of this MOU.

## **Article 5: Publications**

The Parties are encouraged to make widely available on an unrestricted basis the data or other technical information created in the course of the Joint Research Projects or cooperative activities pursuant to this MOU. The Parties shall observe the confidentiality terms set forth in the foregoing Article to ensure no proprietary information is disclosed in any proposed publication or public release of information. The publishing Party shall disclose to the other Party the contents of the any announcement or other publication in advance, and shall consult with the other Party unless a compelling case under the laws applicable to each Party. The terms of this Article shall remain valid for three (3) years after the termination of this MOU.

## **Article 6: Intellectual Property Rights**

“Intellectual Property Rights” shall be as defined in the Appendix.

1. Ownership
  - a) The Intellectual Property Rights related to an invention made independently by a researcher of either Party shall be owned solely by such Party.
  - b) The Intellectual Property Rights related to an invention made jointly by researchers of both Parties (“Jointly-Owned Intellectual Property Rights”) shall be basically owned jointly by the Parties with the extent of the ownership to be determined through consultation between the Parties, taking into consideration the contributions made by each Party.
2. Application and Maintenance

Prior to filing for patent protection or other form of intellectual property protection, the Parties shall consult and determine the extent to which each Party will be responsible for the application and maintenance expenses of the Jointly-Owned Intellectual Property Rights.

## **Article 7: Safety**

The Parties shall ensure that appropriate policies and practices are in place to provide for the safety of their employees, the public, and the environment during the conduct of cooperative activities and subject to applicable national laws and regulations.

## **Article 8: Duration**

This MOU shall remain in effect for five (5) years from the date of signature. It may be terminated, amended or extended by a prior written agreement between both Parties hereto. However, either Party may terminate this MOU upon sixty (60) days written notice to the other. Termination of this MOU will not affect any project specific agreements between the Parties in force at the time of the termination of this MOU.

## **Article 9: Compliance with Export Controls and Regulations**

1. If goods and/or technology are transferred, Parties shall comply with the export control laws and regulations of Japan and the United States of America, as applicable.
2. When export licenses are required by the export control laws and regulations of Japan or the United States of America, the Parties will consult as to whether or not an export license will be obtained. Each Party is responsible for its own compliance with such laws.
3. The Parties represent that they shall not use themselves or intentionally allow any third party to use any goods and/or technology obtained under this MOU for the purpose of

developing or manufacturing nuclear, chemical or biological weapons, or missiles to deliver any such weapons.

#### **Article 10: Disputes**

1. The Parties agree that if any of the terms herein are subject to questions of intent or interpretation, or if the Parties identify other issues that are not addressed in this MOU, the Parties will enter into good faith negotiations to resolve such issues, and the resolution will be incorporated as written amendments to this MOU.
2. As the final resolution to any dispute hereunder, either Party may terminate this MOU under the provisions of Article 8.

#### **Article 11: Assignment**

Neither Party may assign, transfer or dispose of this MOU in whole or in part or any right or obligation hereunder to any individual, firm, institution or corporation without obtaining prior written consent from the other Party; and such consent shall not be unreasonably withheld.

#### **Article 12: Availability of Funds**

The activities contemplated under this MOU are subject to the availability of funds and other necessary resources to the Parties. This MOU does not obligate funds and neither Party is required to obligate funds to the activities proposed herein.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed duplicates of the present MOU on behalf of their respective institutions. Each Party shall keep one copy of the originals.

**For the National Institute of Standards and Technology,**

By: Patrick D. Gallagher  
Dr. Patrick D. Gallagher, Deputy Director

Date: May 4, 2009

**For the National Institute of Advanced Industrial Science and Technology,**

By: 野間口 有  
Dr. Tamotsu Nomakuchi, President

Date: May 4, 2009

**Definitions:****Confidential Information**

1. "Confidential Information" as used in this MOU means the following:
  - a) technical information and documents and marketing information provided or disclosed by the other Party (hereinafter in this Article to include researchers of the other Party) in connection with this MOU, which were disclosed in writing and/or marked with an appropriate confidentiality legend by the other Party at the time of provision or disclosure, or which were disclosed with an oral confidential designation at the time of disclosure and subsequently reduced to writing and marked with an appropriate confidential legend to the other Party within thirty (30) days of the disclosure; and
  - b) all technological achievements such as Intellectual Property Rights like know-how and inventions generated from Joint Research and/or any activities conducted pursuant to this MOU, which Parties agree to designate as confidential promptly after its creation.
  
2. The provisions of the foregoing Paragraph shall not apply to Confidential Information which falls under any of the following:
  - a) Information which was in the public domain at the time of disclosure or thereafter enters the public domain other than through a breach of the receiving Party,
  - b) Information that is lawfully obtained from a third party under circumstances permitting the receiving Party to use or disclose the information without restrictions,
  - c) Information which is in the possession of the receiving Party prior to its receipt from the disclosing Party,
  - d) Information that can be proven in writing to have been developed independently by the receiving Party without using information received from the disclosing Party, and
  - e) Information which is required to be disclosed as a result of government or judicial order.

These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this MOU and are controlling. Nothing in this MOU bars disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

## Intellectual Property Rights

“Intellectual Property Rights” as used in this MOU means the following:

- a) Patent right, utility model right, design right, trademark right, right to lay out and utilize circuits as provided for in the Law Relating to the Circuit Layout of Semiconductor Integrated Circuits, right to grow plants under the Seeds and Seedling Law, and the foreign equivalents to the rights listed above;
- b) Right to obtain a patent, right to obtain a utility model registration, right to obtain design registration, right to obtain trademark registration, right to obtain registration of the right to use layout design integrated circuits, position to obtain breed registration, and the foreign equivalents to the rights listed above;
- c) Right to copyright materials such as programs and databases (“Programs”) for their protection; or
- d) Other technical information (including but not limited to experimentation data, sample materials, and drawings) besides those listed in the foregoing three Sub-paragraphs which is of concealable and proprietary nature and is designated through consultation between the Parties (“Know-how”).