BMES SENIOR MEMBER RESEARCH AGREEMENT

This BMES Senior Member Research Agreement ("Agreement") is entered into as of ______________________ by and between ____________________________________________________ ("Senior Member") and the University of Southern California, a California non-profit public benefit corporation, on behalf of its Biomimetic Microelectronic Systems Center ("USC/BMES").

RECITALS

WHEREAS, USC/BMES acts as a catalyst for research, development and implementation of biomimetic microelectronic systems of the future in medicine, biology, and education;

WHEREAS, research performed by the USC/BMES shall be performed by personnel at USC, the California Institute of Technology, University of California at Santa Cruz, the Alfred Mann Institute for Biomedical Engineering and the Doheny Retina Institute, which have various ownership and management control over the USC/BMES Proprietary Property ("Institutional Owners");

WHEREAS USC/BMES is supported by the National Science Foundation and other federal and government sources, corporations, and other parties interested in the advancement of biomimetic microelectronic systems and technology.

WHEREAS, USC/BMES seeks to collaborate with research members like Senior Member who share USC/BMES’s objectives, and who wish to draw upon and support USC/BMES’s efforts.

WHEREAS, Senior Member seeks to support USC/BMES, gain insight into its advancements, and potentially to license USC/BMES technology that may be developed in the course of its research.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1 "Commitment" means the annual membership fee (financial payment and/or in-kind contribution) made by Senior Member to USC/BMES as specified in the approved Senior Member Additional Benefits Form (Appendix A).

1.2 "Copyrightable Material" means any material or other property developed or reduced to practice in the course of conducting the research specified in the Senior Member Research Form that is or may be copyrightable or otherwise protectable under Title 17 of the United States Code.

1.3 "Effective Date" means the date that this Agreement shall become effective, which date shall be the date set forth in the introductory paragraph of this Agreement.

1.4 "Invention" means any invention or discovery developed or reduced to practice in the course of conducting the research specified in the Senior Member Research Form that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

1.5 "NSF Grant" means the grant received by USC/BMES from the National Science Foundation ("NSF") designating USC/BMES as an Engineering Research Center (ERC) commencing in 2003.

1.6 "Senior Member Additional Benefits" means the benefits listed in Section 4 and Appendix A.

1.7 "Senior Member Research Form" means the document attached hereto as Appendix B and which is completed and approved by both parties in connection with any research performed by USC/BMES on behalf of Senior Member. The obligations and rights of USC/BMES and Senior Member under the Senior Member Research Form shall be effective only if directed funds are provided by the company above and beyond membership fees and if executed by USC/BMES and Senior Member.
1.8 “USC/BMES Personnel” means persons employed, appointed, engaged or authorized by USC/BMES from time to time to work for or in connection with USC/BMES, such as professors, investigators, fellows, graduate or undergraduate or undergraduate students, staff, consultants, or in other capacities.

1.9 “USC/BMES Proprietary Property” means: (a) all existing or future Copyrightable Material, Summaries (as defined below), discoveries, data, algorithms, drawings, models, devices, concepts, ideas, designs, names, engines, routines, software (including source and object code), hardware, formulae, prototypes, Inventions, processes, trade secrets, improvements and know-how conceived, created, developed, acquired or made in whole or in part by USC/BMES Personnel and Senior Member personnel working in collaboration with the USC/BMES Personnel in the course of their work with USC/BMES or using USC/BMES facilities, resources, equipment or funds; and (b) all copyrights, copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, (including, without limitation, registration and application rights) trade names, trade secrets, moral rights, and other intellectual property rights, and all divisions, continuations, reissues, renewals and extensions thereof, regardless of whether any such rights arise under the laws of the United States or any other state, country or jurisdiction relating to the property described in this section 1.9(a) whether now owned or hereinafter acquired.

2. USC/BMES RESEARCH

2.1 Senior Members can contribute to and participate in the research activities of the USC/BMES in two ways:

2.1.1 All Senior Members pay a membership fee (Commitment). Membership fees are considered to be general revenue to the USC/BMES, to be used to further its general research and training objectives.

2.1.2 Each Senior Member is invited to provide additional funds above and beyond their membership fee in order to fund targeted research by faculty of the USC/BMES on a topic to be described in the Senior Member Research Form attached to this Agreement (Appendix B). The specific terms of these targeted research projects shall be negotiated between the Senior Member, the Principal Investigator and the Institutional Owners where the work will be performed and may include benefits to the Senior Member such as the right of first refusal to obtain a license to the intellectual property arising from such research.

2.2 In the event that the Principal Investigator specified in the Senior Member Research Form becomes unable or unwilling to continue the research, and a mutually acceptable substitute is not available, USC/BMES or Senior Member shall have the option to terminate this Agreement upon thirty (30) days’ prior written notice to the other party. In such an event, Senior Member shall not later than thirty (30) days after such termination, pay any portion of its Commitment in respect of the current Annual Period specified in the Senior Member Research Form that remains unpaid.

2.3 Nothing in this Agreement shall be construed to limit the freedom of researchers, including but not limited to the USC/BMES Personnel, whether participants in this Agreement or not, from engaging in similar research inquiries made independently under other grants, contracts or agreements with parties other than Senior Member nor shall there be any limit on the use of USC/BMES Proprietary Property by such researchers unless otherwise prohibited in an applicable license or other arrangement with Senior Member.

2.4 USC/BMES will provide Senior Member, on at least an annual basis, written summaries of USC/BMES’s research results (the “Summaries”) provided that Senior Member acknowledges that USC/BMES shall not be obligated to include in such Summaries any information (i) which is subject to a confidentiality agreement or is proprietary to USC/BMES; (ii) the dissemination of which would be detrimental to the activities of USC/BMES; or (iii) which is restricted by law. Senior Member shall not remove any copyright notices, trademark notices or other proprietary legends of USC/BMES or other third party contained on or in any USC/BMES Proprietary Property.
2.5 The Senior Member Research Form shall specify what, if any, information, equipment, supplies, or other support Senior Member will supply to USC/BMES in furtherance of this Agreement ("Senior Member Supplied Information"). USC/BMES shall have no obligation to perform any tasks or services for the Research Program (as defined in Appendix B) if Senior Member shall fail to provide the Senior Member Supplied Information that is necessary for USC/BMES to perform the tasks or services. Senior Member hereby grants to USC/BMES a non-exclusive, worldwide, perpetual, royalty-free, sub-licenseable (through multiple tiers) license to use, modify, reproduce, distribute, publish, create derivative works, publicly display and perform, market and otherwise exploit the Senior Member Supplied Information in connection with the Research Program provided that (i) in no event shall USC/BMES have the right to sell to third parties such information separate from or in a manner unrelated to the Research Program or any related Inventions or Copyrightable Materials, and (ii) with respect to any Senior Member Supplied Information which constitutes Senior Member Confidential Information, USC/BMES’s rights and obligations are subject to section 8 below.

2.6 Senior Member represents and warrants that it is the sole owner of the Senior Member Supplied Information; it has obtained all necessary consents and made all required payments necessary for USC/BMES to exercise the rights granted herein without any additional payment by USC/BMES; and nothing contained in the Senior Member Supplied Information nor the exercise of the rights granted to USC/BMES infringes upon the proprietary rights of any third party.

2.7 Senior Member and USC/BMES agree that this Agreement is independent of any other agreement between USC and Senior Member.

3. COMMITMENT.

3.1 At least 50% of the Commitment shall be paid in cash to USC/BMES; the balance may be paid as an in-kind contribution whose nature and value shall be decided by mutual agreement between the Senior Member and the Industrial Liaison Officer.

3.2 Senior Member agrees to pay the Commitment then due to USC/BMES for each Annual Period on or before thirty (30) days prior to the commencement of such Annual Period; provided, however, that with respect to the first Annual Period, Senior Member agrees to pay to USC/BMES the Commitment for the entire first Annual Period prior to or concurrently with the execution of this Agreement.

3.3 All Senior Member Commitments are for at least a 3 year period and can be extended beyond this period if so decided by the Senior Member and the BMES Industrial Liaison Officer.

3.4 In the event of termination of this Agreement for any reason whatsoever, Senior Member shall not later than thirty (30) days after such termination, pay any portion of its Commitment in respect of the current Annual Period which remains unpaid.

3.5 Until otherwise notified in writing by the Director of USC/BMES, Senior Member shall make payment of its Commitment currently due by check payable to USC/BMES, and addressed to:

University of Southern California
Biomimetic Microelectronic Systems Center
Doheny Eye Institute, University of Southern California
Los Angeles, CA 90033
Attention: BMES Industrial Relations Office

4. SENIOR MEMBER BENEFITS

4.1 Limited Right of First Offer: If the Senior Member only contributes the Commitment and subject to Senior Member’s payment in full of its Commitment as and when due, USC/BMES’s obligations to NSF under the NSF Grant, the terms of the IP Agreements and Senior Member’s waiver under section 5.3 of this Agreement and provided further that Senior Member is not otherwise in breach of this Agreement, USC/BMES will provide each Senior Member with timely Summaries of all research
advances, new inventions and discoveries arising from general research activities of the USC/BMES that appear to have potential commercial value, provided that such information is not covered by pre-existing confidentiality agreements as described in Paragraph 2.4 above. Also, subject to any superior rights of other Senior Members that contributed research funds to the development of USC/BMES Proprietary Rights, USC/BMES shall provide Senior Members with the opportunity to negotiate with the Institutional Owner of intellectual property related to such advances, inventions or discoveries. The ownership and management control of intellectual property derived from research activities of the USC/BMES is covered by separate agreements with Institutional Owners, including an Intellectual Property Management Agreement among, USC, California Institute of Technology and University of California at Santa Cruz appended to and incorporated thereby in this Senior Membership Agreement and agreements with Alfred Mann Institute for Biomedical Engineering and the Doheny Retina Institute, which agreements allocate ownership and management control among the various Institutional Owners (the “IP Agreements”).

4.2 Right of First Refusal. If additional research funds are given by the Senior Member above and beyond the Commitment and such funds are directed toward research outlined in Appendix B, then the Senior Member will have the exclusive right of first refusal to obtain a license to the USC/BMES Proprietary Property so long as the research agreement entered into between the Senior Partner and the Institutional Owners prior to commencement of the research and payment of the research funds provides for such right.

4.3 Senior Member shall have three (3) months from the date of USC/BMES’s disclosure of an Invention or Copyrightable Material to Senior Member (the “Disclosure”) to exercise its opportunity to negotiate in writing with the Institutional Owner that is managing that intellectual property. If Senior Member exercises its opportunity to negotiate, the Senior Member and the Institutional Owners shall discuss either (a) a royalty-bearing license, including warranties and indemnification provisions, or (b) an “option agreement” to extend the Exclusive Right to Negotiate, within thirty (30) days from the date that Senior Member exercises its Exclusive Right to Negotiate. If Senior Member and the Institutional Owner of the Intellectual Property fail to reach agreement, as evidenced by definitive documents, on the terms of such license or option agreement within this period (or any mutually agreed upon extension), then USC/BMES shall be free to disclose information about the intellectual property to one or more other third parties. If Senior Member fails to exercise the right in writing within three (3) months from the date of the Disclosure, then USC/BMES shall be free to negotiate a license or option agreement regarding such Invention or Copyrightable Material with one or more other third parties.

4.4 Senior Member shall have other benefits as contained in Appendix A, as amended from time to time.

5. PROPRIETARY RIGHTS.

5.1 The Institutional Owners shall own all right, title and interest in and to USC/BMES Proprietary Property. All rights of USC/BMES hereunder are irrevocable and shall vest and remain perpetually vested in USC/BMES whether this Agreement expires in its normal course or is terminated and to the extent Senior Member has any rights, title, or interest, including, without limitation, any rights, title, or interest under copyright, patents, or otherwise in and to any Inventions or Copyrightable Material developed under this Agreement, Senior Member hereby irrevocably assigns and transfers such rights to USC/BMES.

5.2 As between USC/BMES and Senior Member, Senior Member shall own all right, title and interest in and to all Senior Member Supplied Information, if any, specified in the Senior Member Research Form, subject to the license granted to USC/BMES set forth above in Section 2.5.

5.3 Rights to and procedures for protection of intellectual property developed in the course of targeted
research performed with funding from the Senior Member shall be negotiated between the Senior Member and the Institutional Owners performing the research as described in Paragraph 2.1.2, and are subject to the terms of the IP Agreements. The Senior Member and the Institutional Owners may also negotiate additional rights for the Senior Member, such as the exclusive right of first refusal to license any USC/BMES Proprietary Property arising from such research.

6. CONFIDENTIAL INFORMATION.

6.1 During the course of this Agreement, USC/BMES may provide Senior Member with USC/BMES Proprietary Property, data, computer software, algorithms, formulae, code, drawings, models, prototypes, demonstrations, scientific results, or know-how, whether provided verbally or in documentary, electronic, digital, video or other pictorial form, which USC/BMES regards as confidential or proprietary (hereinafter, “USC/BMES Confidential Information”). USC/BMES shall use reasonable efforts to, insofar as practical, mark such information as “Confidential”, or advise Senior Member of that fact in writing as promptly as possible after disclosure to Senior Member; provided, however, that failure to mark such information as confidential or advise in writing to Senior Member of the confidential nature of such information in no way restricts or otherwise limits the characterization of such information as USC/BMES Confidential Information.

6.2 Senior Member agrees not to disclose or use USC/BMES Confidential Information, except as authorized in writing by USC/BMES. Senior Member agrees to cease to use, and to return to USC/BMES or to destroy all copies of USC/BMES Confidential Information (including copies in electronic form), within 30 days after request by USC/BMES.

6.3 During the course of this Agreement, Senior Member may provide USC/BMES with certain information, data or material in writing that Senior Member has clearly marked in writing as confidential or proprietary in nature (“Senior Member Confidential Information”). Subject to the terms of Section 2.5, USC/BMES shall receive and hold such information in confidence and agrees to use its reasonable efforts to prevent disclosure to third parties of said information in the same manner USC/BMES treats its own similar information.

6.4 The obligations of Senior Member and USC/BMES under this Section 6 shall not apply to USC/BMES Confidential Information or Senior Member Confidential Information, as applicable, to the extent that the party to whom such information is disclosed (“Recipient”) can document by credible evidence that such information: (a) was in Recipient’s possession free of any obligation of confidence prior to disclosure under this Agreement; (b) has been published or otherwise in the public domain at the time of disclosure; (c) is disclosed to Recipient by a third party not under an obligation of confidence to the non-disclosing party; or (d) is developed by Recipient independent of any disclosure made under this Agreement. The obligations of a party under this Section 6 also shall not apply to the extent that a party is required by law to disclose USC/BMES Confidential Information or Senior Member Confidential Information, as applicable, or to preserve such information, including pursuant to any law, regulation or program of the federal government applicable to USC/BMES, its employees or agents.

6.5 Each party acknowledges that the USC/BMES Confidential Information and Senior Member Confidential Information is owned solely by USC/BMES and Senior Member, respectively, and that the unauthorized disclosure of such information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the other party will have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach. In the event any action is taken to enforce the proceedings of this Agreement, the unsuccessful party shall pay to the other the reasonable fees and expenses of legal counsel incurred in taking such action.

7. USC/BMES RESEARCH/PUBLICATIONS.

Nothing in this Agreement shall be construed to limit the freedom of USC/BMES or USC/BMES Personnel...
or any researcher, professor or student, whether participants in this Agreement or not, from engaging in research, development, consultation or other services for USC/BMES, or other third parties.

8. COMPLIANCE WITH LAWS.
As a condition to USC/BMES obtaining financial and other support from government sources, USC/BMES may be required to comply with government regulations, such as government audits, filing of period reports, automatic grants of patent rights to the federal government, and other obligations. Senior Member agrees to cooperate with USC/BMES’s reasonable requests from time to time in order that USC/BMES may comply with such requirements unless prohibited by law. In the event Senior Member elects not to cooperate with USC/BMES, USC/BMES may terminate this Agreement immediately upon written notification to Senior Member. Such termination shall not for any purpose whatsoever relieve Senior Member of its obligation to pay in full its Commitment in respect of the Annual Period in which notice of termination has been given.

9. WARRANTY DISCLAIMER.
9.1. USC/BMES EXPRESSLY AND SPECIFICALLY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE SUBJECT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY MATERIAL, TECHNOLOGY, RESEARCH, INVESTIGATION, PROPRIETARY PROPERTY, INVENTION, TRADEMARKS AND/OR PRODUCTS, TANGIBLE OR INTANGIBLE, DEVELOPED OR FURNISHED HEREUNDER, OR ANY COMPONENT THEREOF, AND THE EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE THEREFOR, OR NON-INFRINGEMENT THEREOF, INCLUDING BUT NOT LIMITED TO:
A. THE ABILITY OF USC/BMES AND/OR ITS PERSONNEL TO SUCCESSFULLY ACCOMPLISH ANY RESEARCH OR INVESTIGATION REFERRED TO HEREIN OR IN THE APPROVED SENIOR MEMBER RESEARCH FORM; AND
B. ANY RESEARCH OR THE RESULTS OF ANY RESEARCH BY USC/BMES AND/OR ITS PERSONNEL ON BEHALF OF SENIOR MEMBER OR OTHERWISE; AND
C. ANY USC/BMES PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS AND/OR PRODUCTS, TANGIBLE OR INTANGIBLE, DEVELOPED, CREATED OR ACQUIRED BY USC/BMES AND PROVIDED OR DELIVERED TO, OR DISCUSSED WITH SENIOR MEMBER; AND
D. THE FUNCTIONALITY, SPECIFICATIONS, PERFORMANCE CRITERIA OR COMMERCIAL SUCCESS OF ANY PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS AND/OR PRODUCTS, TANGIBLE OR INTANGIBLE, DEVELOPED AS A RESULT OF SENIOR MEMBER’S USE OF PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS AND/OR PRODUCTS, TANGIBLE OR INTANGIBLE, OR IN COLLABORATION WITH USC/BMES AND/OR ITS PERSONNEL AND/OR THROUGH THE USE OF USC/BMES CONFIDENTIAL INFORMATION, USC/BMES PROPRIETARY PROPERTY, OR TECHNOLOGY.
NEITHER SENIOR MEMBER, THE PRINCIPAL INVESTIGATOR NOR ANY EMPLOYEE OF OR OTHER PERSON RELATED TO SENIOR MEMBER IS AUTHORIZED TO GIVE ANY WARRANTY IN THE NAME OF OR ON BEHALF OF USC/BMES.

9.2. IN NO EVENT WILL USC/BMES BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY NATURE IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, OR OTHERWISE, EVEN IF USC/BMES HAS BEEN
 ADVISED OF THE POSSIBILTY OF SUCH DAMAGES. ADDITIONALLY, USC/BMES’S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT BE IN EXCESS OF THE TOTAL AMOUNT OF COMMITMENT PAID BY SENIOR MEMBER TO USC/BMES UNDER THIS AGREEMENT.

9.3 SENIOR MEMBER AGREES THAT IT HAS NOT AND WILL NOT RELY UPON ANY TECHNICAL INFORMATION PROVIDED BY USC/BMES OR USC/BMES PERSONNEL (INCLUDING BUT NOT LIMITED TO ANY MATERIAL, TECHNOLOGY, RESEARCH, INVESTIGATION, PROPRIETARY PROPERTY, INVENTION, PERFORMANCE SPECIFICATIONS OR CRITERIA, OR FUNCTIONALITY SPECIFICATIONS OR CRITERIA) IN DEVELOPING OR USING FOR ANY PURPOSE USC/BMES PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS OR PRODUCTS, TANGIBLE OR INTANGIBLE. SENIOR MEMBER FURTHER AGREES THAT IT WILL DO ITS OWN TESTING, AND MAKE ITS OWN INDEPENDENT INVESTIGATION AND ASSESSMENT OF THE POTENTIAL USES AND LIMITATIONS OF ANY SUCH USC/BMES PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS OR PRODUCTS, TANGIBLE OR INTANGIBLE, AND THE ACTUAL OR POTENTIAL MARKET THEREFOR (COMMERCIAL OR OTHERWISE), AND THAT IT WILL INDEPENDENTLY TEST, INVESTIGATE, ANALYZE, EVALUATE, ASSESS AND DETERMINE WHETHER SUCH USC/BMES PROPRIETARY PROPERTY, INVENTION, TECHNOLOGY, TRADEMARKS OR PRODUCTS, TANGIBLE OR INTANGIBLE, IS OR MAY BE ACCEPTABLE FOR PURPOSES INTENDED BY SENIOR MEMBER PRIOR TO ANY USE, MANUFACTURE, DISTRIBUTION AND/OR SALE.

10. TERM/TERMINATION.

10.1 This Agreement is entered into as of the Effective Date and shall continue until the expiration of the final Annual Period for which Senior Member has paid its Commitment unless earlier terminated pursuant to this Section.

10.2 Either party may terminate this Agreement without cause, by providing written notice thereof to the other party at least 90 days in advance of such termination. Such termination shall not relieve Senior Member of its Commitment in respect to the first 3 year Period in which notice of termination has been given. Such termination shall not relieve a party of its other obligations under this Agreement incurred prior to termination.

10.3 In the event Senior Member commits a material breach of this Agreement, USC/BMES may provide written notice of the breach and Senior Member shall have ten (10) business days within which to remedy the breach. If Senior Member fails to remedy the breach within such period, USC/BMES may terminate this Agreement upon delivery of written notice to Senior Member. Such termination of Senior Member shall not relieve it of its obligations, including obligations related to payment of the Commitment, in respect of the Annual Period in which it was given notice of termination. In the event of termination of this Agreement by USC/BMES in accordance with this Section, Senior Member shall promptly (i) return to USC/BMES all USC/BMES Confidential Information in Senior Member’s possession or control and (ii) provide USC/BMES with a written statement certifying that Senior Member has complied with the foregoing obligations. All rights, benefits and licenses granted to Senior Member shall terminate upon such termination.

10.4 The provisions and obligations of Sections 2, 3, 5, 6, 7, 8, 9, 11, and 12 shall continue notwithstanding the expiration or termination of this Agreement.

11. INDEMNITY

Senior Member agrees to hold harmless, indemnify and defend USC/BMES and its trustees, officers, employees and agents from all liabilities, demands, damages, expenses (including, without limitation, reasonable attorney’s fees) and losses arising out of or in connection with (i) any actual or alleged breach or default of any agreement or covenant hereunder including, without limitation, any unauthorized use or
dissemination of USC/BMES Proprietary Property or the results of USC/BMES’s research, (ii) USC/BMES’s use of any Senior Member Supplied Information, (iii) Senior Member’s use, reproduction, distribution or other exploitation (to the extent permitted hereunder) of any USC/BMES Proprietary Property, (iv) Senior Member’s use, manufacture, distribution, and/or sale of products or inventions using or incorporating USC/BMES Proprietary Property, or (v) claims of infringement with respect to the Senior Member Supplied Information and the Senior Member Confidential Information.

12. GENERAL PROVISIONS.

12.1 This Agreement shall not create a partnership, joint venture, agency, employment, or work for hire relationship between the parties, or by one or more employees of one party to the other party.

12.2 This Agreement shall not create any rights or confer a benefit in favor of any person or entity not a party to this Agreement. This Agreement, and all rights and obligations hereunder, shall be binding on the parties hereto and their respective heirs, successors, licensees and permitted assigns.

12.3 USC/BMES and Senior Member agree to comply with laws and regulations applicable to their performance of this Agreement, including federal laws and regulations pertaining to export of technology. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts entered into and to be performed within said State, excluding choice of law principles of such State which would require application of the laws of another jurisdiction.

12.4 The USC/BMES and Senior Member agree to submit any dispute, claim, or controversy arising out of or relating to this Agreement or the parties’ rights or obligations under this Agreement to binding arbitration. Such arbitration shall be submitted to and conducted by a retired judge or justice from the panel of JAMS, in Los Angeles, California, for trial of all issues of law and fact, under the California rules of procedure and evidence. If the parties are not able to agree on a member of the JAMS panel, JAMS shall appoint a member of its panel to conduct the arbitration. The decision of the arbitrator shall be final, conclusive and binding on the parties. Judgment upon the decision or award of the arbitrator may be entered and enforced by any court of competent jurisdiction.

12.5 In the event an arbitration, or other action, is instituted concerning, arising out of, or related to this Agreement, the prevailing party may recover as part of the decision or award, its reasonable attorneys fees and costs from the non-prevailing party.

12.6 Neither party may assign this Agreement or any of its rights hereunder or delegate any of its obligations hereunder without the prior written consent of the other party, which it may give or withhold in its sole discretion, which may not be unreasonably withheld.

12.7 No waiver by any party hereto of any breach or provision or term of this Agreement shall constitute or be deemed to be a continuing waiver of such provision or a waiver of any other breach or provision hereof. In the event any provision contained herein is held to be invalid, unlawful or unenforceable, such provision shall be severable from the remaining provisions of this Agreement that shall remain in full force and effect.

12.8 All notices under this Agreement shall be in writing and shall be addressed to the party to be served at the address set forth below such party’s name on the signature page (unless otherwise notified in accordance with this section) and shall be sent by return receipt mail with postage prepaid, by direct or overnight courier service with a signature of receipt or by facsimile transmission. Notices shall be effective upon the seventh day following mailing if sent by mail, on the day after receipt if sent by courier or upon confirmation of successful transmission, if by facsimile.

12.9 USC/BMES and Senior Member represent that they have the authority to enter into this Agreement and to perform their obligations hereunder, and the officer executing this Agreement is authorized to do so.

12.10 This Agreement and if applicable the Approved Senior Member Research Form attached hereto constitute the entire and complete agreement between USC/BMES and Senior Member, and
supersedes all prior agreements, understandings, representations, conditions, warranties, inducements and covenants, both written and oral, between the parties concerning the subject matter of this Agreement and the Approved Senior Member Research Form, and are not intended to confer upon any person other than the parties to this Agreement any rights or remedies. Senior Member agrees that it is not relying upon, and has not relied upon, any technical information, performance specifications or criteria, or functionality specifications or criteria regarding any research, investigation, USC/BMES Proprietary Property, invention or technology furnished hereunder. The parties specifically agree that they are not relying upon any understandings, representations, conditions, warranties, inducements or covenants, either written or oral, regarding any material, research, investigation, USC/BMES Proprietary Property, invention or technology furnished hereunder, not specifically set forth in this Agreement and the Approved Senior Member Research Form. No amendment, modification, extension or cancellation of this Agreement, or the Approved Senior Member Research Form, shall be binding on the parties unless mutually agreed to by an instrument in writing executed by each of the parties.

12.11 Both parties have had their legal counsel review, or have had the opportunity for legal counsel to review, this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date provided above.

UNIVERSITY OF SOUTHERN CALIFORNIA, on behalf of BMES

___________________________________
Senior Member Company Name

__________________________________
By: ________________________________
Name: _____________________________
Title: ______________________________

BMES

By: Mark S. Humayun
Title: Director
APPENDIX A

SENIOR MEMBER ADDITIONAL BENEFITS

Senior Member additional benefits are as follows:

1. Access to state-of-the-art, cutting edge research and technology applications specific to the company (from research specified in Senior Member Research Form, consistent with BMES’s Strategic Plan) with potential utility within the Senior Member’s organization, subject to the terms of the Agreement.

2. A designated Senior Member Company Day, during which key company executives and researchers can be exposed to specific technologies and demonstrations in their field of interests.

3. Access to BMES’s state-of-the-art, cutting edge research and technology applications and option to negotiate a royalty-bearing license or option agreement to negotiate such a license, subject to any and all BMES contractual commitments with third parties.

4. Interaction with leading researchers intimately familiar with technologies relevant to company products and who can provide feedback and comments that may potentially lead to competitive advantages in the marketplace and improvements in service to end users.

5. Representatives on BMES’s Scientific Advisory Board (SAB), which reviews and provides advice regarding BMES’s strategic plan. BMES shall notify Senior Member when such meetings of the Scientific Advisory Board are scheduled by BMES. SAB meetings provide an industry-based forum for potentially influencing the direction of the Center through Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis and other activities.

6. Access to USC/BMES undergraduate, graduate and doctoral students trained in biomimetic microelectronic systems and familiar with a cross-disciplinary, team-working environment for recruitment or internship purposes. BMES does not represent or in any way guarantee that students will be available for or accept internship, employment, consulting, contracting or other engagement opportunities with Senior Member.

7. Opportunities for personnel exchanges, either company personnel at BMES or BMES researchers at company facilities, subject to appropriate review and documentation.

8. Opportunity to network and interact with complementary companies (as well as competitors) in an environment that can lead to collaborative efforts.

9. A copy of BMES’s annual report to the NSF, which documents progress of all research and education programs in BMES.

10. Research papers, reports, periodic newsletters and other publications on biomimetic microelectronic systems.

11. Direct lines of communication between BMES and key Senior Member executives to provide opportunities for collaboration.

12. Advanced invitations to BMES programs, conferences, workshops, and seminars dealing with biomimetic microelectronic systems.

13. Extended use of the University of Southern California School of Engineering libraries.
APPENDIX B

SENIOR MEMBER RESEARCH FORM
BIOMIMETIC MICROELECTRONIC SYSTEMS CENTER

EFFECTIVE DATE OF FORM: ______________________
SENIOR MEMBER COMPANY NAME ______________________________________________________

I. SENIOR MEMBER CONTACTS
   Principal Contact                        Alternate Contact
   Name _____________________________ _____________________________
   Title _____________________________ _____________________________
   Address _____________________________ _____________________________
   _____________________________ _____________________________
   _____________________________ _____________________________
   Telephone _____________________________ _____________________________
   Fax _____________________________ _____________________________
   Email _____________________________ _____________________________

ANNUAL OR OTHER COMMITMENT AMOUNT $__________

DESCRIPTION/TERMS OF IN-KIND CONTRIBUTION (add attachment if needed)
________________________________________________________________________________________________________________________________________________________________________________________

II. ANNUAL PERIOD
   Beginning _________________, ______ and continuing until _________________, ______.

III. USC/BMES PRINCIPAL INVESTIGATOR(S)

IV. TECHNICAL AREA (Attach description if applicable.)

V. RESEARCH PROGRAM (Attach description of recommended research methodology/proposal if applicable.)

VI. SENIOR MEMBER SUPPLIED INFORMATION (Attach additional sheets if necessary)

RESTRICTIONS (if any)
_____________________________________________________________________________________________________________________________________________________________________

Approved:
For Senior Member _____________________________ _____________________________
   (Signature)                                  Date
   ___________________________________________
   (Name/Title)
