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

RECATIALS
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 USC/BMES is supported by the National Science Foundation and other federal and govern-
ment sources, corporations, and other parties interested in the advancement of biomimetic microelec-
tronic systems and technology.
WHEREAS, USC/BMES seeks to collaborate with research members like Technology Member who
share USC/BMES’s objectives, and who wish to draw upon and support USC/BMES’s efforts.
WHEREAS, Technology Member seeks to support USC/BMES, gain insight into its advancements, and
have certain rights potentially to use certain USC/BMES technology.
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 in-kind contribution made by Technology Member to
USC/BMES as specified in the approved Technology Member Research Form.
1.2 “Copyrightable Material” means any material or other property developed by
USC/BMES 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 by USC/BMES 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 1996.
1.6 “Technology Member Benefits” means the benefits listed in Section 4 and Appendix
A.
1.7 “Technology Member Research Form” means the document attached hereto as Ap-
pendix B and which is completed and approved by both parties. The obligations and
rights of USC/BMES and Technology Member under the Technology Member Re-
search Form shall be effective only if executed by USC/BMES and Technology Mem-
ber.
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 as pro-
fessors, 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, mod-
els, 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 Technology 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 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 any research 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 Technology Member.
2.2 USC/BMES will provide Technology Member, on at least an annual basis, written summaries of USC/BMES’s research results in connection with the Commitment (the “Summaries”) provided that Technology 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. Technology 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.
2.3 Technology Member and USC/BMES agree that this Agreement is independent of any other agreement between USC and Technology Member.

3. COMMITMENT
3.1 Technology Member agrees to contribute the Commitment in accordance with the Technology Member Research Form.
3.2 In the event of termination of this Agreement for any reason whatsoever, Technology Member shall not later than thirty (30) days after such termination, contribute any portion of its Commitment in respect of the current Period which remains unpaid or undelivered.
3.3 Until otherwise notified in writing by the Director of BMES/USC, Technology Member shall make payment of its Commitment currently due by check payable to BMES/USC, and addressed to:

Biomimetic MicroElectronic Systems Center
University of Southern California
1450 San Pablo Street, DVRC 205-C
Los Angeles, CA 90033
Attention: BMES Industrial Relations Office

4. TECHNOLOGY MEMBER BENEFITS
3.1 Technology Member shall have the benefits as contained in Appendix A, as amended from time to time.
5. **PROPRIETARY RIGHTS.**

5.1 USC/BMES 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 Technology 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, Technology Member hereby irrevocably assigns and transfers such rights to USC/BMES.

6. **CONFIDENTIAL INFORMATION.**

6.1 During the course of this Agreement, USC/BMES may provide Technology 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 Technology Member of that fact in writing as promptly as possible after disclosure to Technology Member; provided, however, that failure to mark such information as confidential or advise in writing to Technology 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 Technology Member agrees not to disclose or use USC/BMES Confidential Information, except as authorized in writing by USC/BMES. Technology 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, Technology Member may provide USC/BMES with certain information, data or material in writing which Technology Member has clearly marked in writing as confidential or proprietary in nature (“Technology Member Confidential Information”). Except as may be permitted under this Agreement, 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 Technology Member and USC/BMES under this Section 6 shall not apply to USC/BMES Confidential Information or Technology 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 Technology 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 Technology Member Confidential Information is owned solely by USC/BMES and Technology 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/IMSC RESEARCH/PUBLICATIONS.**

Nothing in this Agreement shall be construed to limit the freedom of USC/BMES or USC/IMSC 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. Technology 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 Technology Member elects not to cooperate with USC/BMES, USC/BMES may terminate this Agreement immediately upon written notification to Technology Member. Such termination shall not for any purpose whatsoever relieve Technology Member of its obligation to contribute in full its Commitment in respect of the 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 TECHNOLOGY MEMBER RESEARCH FORM; AND

B. ANY RESEARCH OR THE RESULTS OF ANY RESEARCH BY USC/BMES AND/OR ITS PERSONNEL ON BEHALF OF TECHNOLOGY 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 TECHNOLOGY 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 TECHNOLOGY 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 TECHNOLOGY MEMBER, THE PRINCIPAL INVESTIGATOR NOR ANY EMPLOYEE OF OR OTHER PERSON RELATED TO TECHNOLOGY 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 possibility 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 technology member to USC/BMES under this agreement.

9.3 Technology 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. Technology 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 technology 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 Period for which Technology 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 Technology Member of its Commitment in respect to the 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 Technology Member commits a material breach of this Agreement, USC/BMES may provide written notice of the breach and Technology Member shall have ten (10) business days within which to remedy the breach. If Technology Member fails to remedy the breach within such period, USC/BMES may terminate this Agreement upon delivery of written notice to Technology Member. Such termination of Technology Member shall not relieve it of its obligations, including obligations related to contribution of the Commitment, in respect of the 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, Technology Member shall promptly (i) return to USC/BMES all USC/BMES Confidential Information in Technology Member's possession or control and (ii) provide USC/BMES with a written statement certifying that Technology Member has complied with the foregoing obligations. All rights, benefits and licenses granted to Technology 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.
6. **INDEMNITY**

Technology 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 Technology Member Supplied Information, (iii) Technology Member’s use, reproduction, distribution or other exploitation (to the extent permitted hereunder) of any USC/BMES Proprietary Property, (iv) Technology 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 Technology Member Supplied Information and the Technology Member Confidential Information.

7. **GENERAL PROVISIONS.**

7.1 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.

7.2 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.

7.3 USC/BMES and Technology 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.

7.4 The USC/BMES and Technology 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.

7.5 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.

7.6 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.

7.7 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 which shall remain in full force and effect.

7.8 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 or until 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.

7.9 USC/BMES and Technology 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.

7.10 This Agreement and the Approved Technology Member Research Form attached hereto constitute the entire and complete agreement between USC/BMES and Technology 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 Technology Member Research Form, and are not intended to confer upon any person other than the parties to this Agreement any rights or remedies. Technology 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 Technology Member Research Form. No amendment, modification, extension or cancellation of this Agreement, or the Approved Technology Member Research Form, shall be binding on the parties unless mutually agreed to by an instrument in writing executed by each of the parties.

7.11 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

__________________________________
By: ________________________________
Dennis F. Dougherty
Senior Vice-President, Administration

BMES

TECHNOLOGY MEMBER

Technology Member Company Name

By: ________________________________
Name:

Title:
APPENDIX A

TECHNOLOGY MEMBER BENEFITS

Technology Member benefits for the commitment in the Technology Member Research Form are the following:

1. 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.
2. 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.
3. 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 Technology Member.
4. Opportunities for personnel exchanges, either company personnel at BMES or BMES researchers at company facilities, subject to appropriate review and documentation.
5. Opportunity to network and interact with complementary companies (as well as competitors) in an environment that can lead to collaborative efforts.
6. A copy of BMES’s annual report to the NSF, which documents progress of all research and education programs in BMES.
7. Research papers, reports, periodic newsletters and other publications on neuroscience, neural engineering, and biomedical implant technologies.
8. Direct lines of communication between BMES and key Technology Member executives to provide opportunities for collaboration.
9. Advance invitations to BMES programs, conferences, workshops, and seminars dealing with neuroscience, neural engineering, and biomedical implant technologies.
10. Extended use of the University of Southern California School of Engineering libraries.
11. Notwithstanding any provision to the contrary in this Agreement, Technology Member shall have the right to disclose the Summaries provided by BMES to third parties in the exact form provided to Technology Member without deleting any disclaimers or copyright notices. In no event, however, shall Technology Member use the Summaries in such a manner to suggest that BMES or USC either promote or endorse Technology Member or any of its technologies, products, or operations.
APPENDIX B

TECHNOLOGY MEMBER RESEARCH FORM
BIOMIMETIC MICROELECTRONIC SYSTEMS ENGINEERING RESEARCH CENTER

EFFECTIVE DATE OF FORM: _________________
TECHNOLOGY MEMBER ________________________________

I. TECHNOLOGY MEMBER CONTACTS

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II. COMMITMENT

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

_________________________________________________________

VALUE OF COMMITMENT $ __________

EFFECTIVE PERIOD

Beginning _________________, ______ and continuing until _________________, ______.

Approved:

For Technology Member

(Signature) Date

_________________________________________________________

(Name/Title)