

MEMBERSHIP AGREEMENT

NO. _____

Center for Biophotonic Sensors and Systems
NSF Industry/University Cooperative Research Center

This Agreement (the "Agreement") is made as of _____, 20____, by and between the Regents of the University of California, on behalf of its Davis Campus, with principal office at 1850 Research Park Drive, Suite 300, Davis CA 95618 (hereinafter called "UNIVERSITY") and _____, with offices at _____ (hereinafter called "COMPANY") for the University's Center for Biophotonic Sensors and Systems, under the Industry/University Cooperative Research Center Program of the National Science Foundation.

WHEREAS, Boston University has established an Industry/University Cooperative Research Center, the Center for Biophotonic Sensors and Systems ("CENTER");

WHEREAS, the CENTER is defined as a multi-site industry/university cooperative research center, with Boston University as the lead institution, and the University of California Davis as the initial university site of the CENTER;

WHEREAS, other universities may later join the CENTER, and collectively with UNIVERSITY and Boston University, will be referred to as "UNIVERSITY AFFILIATES";

WHEREAS, COMPANY intends to join CENTER as a _____ (FULL / ASSOCIATE) MEMBER, with rights as defined in the CENTER bylaws and in this Agreement;

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support the CENTER and to maintain a mechanism whereby the university environment can advance, develop, and promote research in biophotonic imaging, photonics based molecular diagnostics and point-of-care biophotonic systems through research and development, education, and technology exchange among academic, industry, and government entities;

NOW, THEREFORE, the parties hereby agree to the following terms and conditions:

- A. UNIVERSITY SITE will be operated by certain faculty, staff and students at the UNIVERSITY. The first phase started on March 1, 2011, and is continuing through 2/28/2017. Phase II is expected to be for a period of five (5) years, starting 3/1/2017, based on UNIVERSITY's proposal due at NSF on July 11, 2016. The UNIVERSITY SITE will be supported jointly by industrial firms, Federal laboratories, the National Science Foundation (NSF), and the UNIVERSITY AFFILIATES.
- B. Any Industrial Firm, Federal Research and Development organization, or any Government- owned Contractor operated laboratory may become a member of the CENTER, consistent with applicable state and federal laws and statutes.
- C. If joining as a FULL MEMBER, COMPANY agrees to contribute \$50,000 annually in support of the UNIVERSITY SITE. Payment of these fees shall be made in four equal quarterly installments of \$12,500 on January 1st, April 1st, July 1st and October 1st of each year of sponsorship. If joining as

an ASSOCIATE MEMBER, COMPANY will contribute \$25,000 annually in support of the UNIVERSITY SITE. Payment of these fees shall be made in four equal quarterly installments of \$6,250 on January 1st, April 1st, July 1st and October 1st of each year of sponsorship. UNIVERSITY shall submit an invoice to the COMPANY for the payment of dues (pro-rated for the incomplete 1st quarter of membership, if applicable) upon execution of this agreement and thirty (30) days before the beginning of each subsequent quarter for which membership fees are due. Payment will be due and payable to the address of UNIVERSITY on invoice within thirty (30) days after the COMPANY's receipt of the aforementioned invoices. COMPANY may elect to pay the full year membership of \$50,000 for FULL membership and \$25,000 for ASSOCIATE membership within thirty (30) days of receiving the invoice for the 1st quarter of each fiscal year.

a. Checks are made payable to "The Regents of the University of California", and

b. mailed to: Dept. of Pathology and Laboratory Medicine
UC Davis Health System,
Pathology Business Office,
3700 Business Drive, Suite 130,
Sacramento, CA 95820

Because research of the type to be done by the UNIVERSITY takes time and research results may not be obvious immediately, COMPANY should join the CENTER with the intention of remaining a fee-paying supporter for at least two years. However, COMPANY may terminate this Agreement by giving the UNIVERSITY 180 day written notice prior to the termination date.

- D. There will be an Industrial Advisory Board (IAB) composed of one representative from each COMPANY. This board makes recommendations on (a) the research projects to be carried out by CENTER, (b) the apportionment of resources to these research projects and (c) changes in bylaws. The operation of this board is specified in the bylaws.
- E. UNIVERSITY reserves the right to publish in scientific or engineering journals the results of any research performed by CENTER. COMPANY, however, shall have the opportunity to review any paper or presentation containing results of the research program of CENTER prior to publication of the paper, and shall have the right to request a delay in publication for a period not to exceed 90 day(s)/year(s) from the date of submission to COMPANY, provided that COMPANY makes a written request and justification for such delay within 45 days from the date the proposed publication is submitted by certified mail to COMPANY.
- F. All patents derived from inventions conceived and first actually reduced to practice in the course of CENTER funded research conducted by a UNIVERSITY SITE shall belong to the UNIVERSITY. UNIVERSITY will take such action as is necessary to ensure that it has ownership of all patents developed from this work, and shall be responsible for ensuring compliance with chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act.
- G. If only one COMPANY seeks a license, that COMPANY may obtain a fee-bearing license that is exclusive, except that the license is subject to the rights of the federal government under the Bayh-Dole Act. COMPANY has the right to sublicense its subsidiaries and affiliates. Such COMPANY shall be responsible to pay patent application and maintenance costs.
- H. If more than one COMPANY seeks a license, then UNIVERSITY agrees that all CENTER members are entitled to nonexclusive royalty-free licenses. COMPANY will have the right to sublicense its subsidiaries and affiliates. COMPANIES agree to collectively pay all patent application and maintenance costs.

- I. Copyright registration may be obtained by the UNIVERSITY SITES having ownership of software developed through the CENTER. To the extent it has the legal right to do so, the UNIVERSITY SITE will grant a non-sublicensable royalty-free non-exclusive time- limited license to COMPANIES that are CENTER sponsors in good standing at the time of disclosure and request such a license within a UNIVERSITY SITE-designated time period. COMPANY will have the right to sublicense its subsidiaries and affiliates for internal use of the software, but will not have the right to sublicense other entities. COMPANY will have the right to enhance and to re-market enhanced or un-enhanced software provided the COMPANY negotiates in good faith a royalty-bearing license agreement with the UNIVERSITY SITE, which royalty shall be based on the worth of the initial software and a fair sale price of the enhanced or un-enhanced software product sold or licensed by COMPANY. If only one COMPANY seeks a license, that COMPANY may negotiate an exclusive, royalty-bearing license from the UNIVERSITY SITE that owns the copyright rights.
- J. Any royalties and fees received by UNIVERSITY under this Agreement, over and above expenses incurred, shall be distributed according to the policy of UNIVERSITY.
- K. During the term of this Membership Agreement, COMPANY grants CENTER the right to identify COMPANY as a participant of CENTER in directories and other marketing materials, including the CENTER website. COMPANY may publicly identify its membership in CENTER in documents, press releases, brochures and other materials. All such identifications by either party shall be limited to the name (in text and graphics) and address of the COMPANY or CENTER, unless written permission is granted to do otherwise
- L. **Provision applicable only to corporate entities:** Neither party is assuming any liability for the actions or omissions of the other party. Each party will indemnify and hold the other party harmless against all claims, liability, injury, damage or cost based upon injury or death to persons, or loss of, damage to, or loss of use of property that arises out of the performance of this agreement to the extent that such claims, liability, damage, cost of expense results from the negligence of a party's agents or employees.
- M. **Provision applicable only to Governmental entities:** Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including but not limited to contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors or subcontractor at any tier), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party's property or the property of its Related Entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of gross negligence or wilful misconduct

UNIVERSITY

Name: Ahmad Hakim-Elahi, Ph.D., J.D.

Title: Executive Director, Research Administration

Signature: _____

Date: _____

COMPANY/Government Entity

Name: _____

Title: _____

Signature: _____

Date: _____