

MEMBERSHIP AGREEMENT

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

This Agreement is made this ___ day of _____, 2011 by and between the Trustees of Boston University with principal offices at One Silber Way, Boston, MA 02215 (hereinafter called "UNIVERSITY") and _____, with offices at _____ (hereinafter called "COMPANY") for the center comprising and acting through the Center for Biophotonic Sensors and Systems ("CENTER"), which is defined as all Biophotonic Sensors and Systems university sites (hereinafter called "UNIVERSITY AFFILIATES") funded by the Industry/University Cooperative Research Center program of the National Science Foundation ("NSF"), under NSF Grant Number IIP-1068070.

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 biophotonics 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. CENTER will be operated by certain faculty, staff and students at the UNIVERSITY AFFILIATE level. For the first five years, the CENTER 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 sponsor of the CENTER, consistent with applicable state and federal laws and statutes. Federal Research and Development organizations and Government-owned Contractor Operated laboratories may become sponsors of the CENTER on terms and conditions other than those in this agreement upon approval by UNIVERSITY and consistent with NSF policy.
- C. COMPANY agrees to contribute \$50,000 annually in support of the CENTER. Payment of these fees shall be made, at the election of the Company, as a lump sum or in four equal quarterly installments of \$12,500 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 the first year dues (pro-rated for the incomplete year if applicable) within thirty (30) days after the initial meeting of this CENTER. Payment will be due and payable to the address of UNIVERSITY on invoice thirty (30) days after the COMPANY's receipt of the aforementioned invoice or in quarterly installments as provided above. Because research of the type to be done by the CENTER takes time and research results may not be obvious immediately, COMPANY should join 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 AFFILIATE 180 day written notice prior to the termination date.

Except as set forth below, the results of CENTER research will be made equally available without condition and restriction on use to all sponsoring COMPANIES. Ownership of patents and copyrights that result from CENTER research will remain with the UNIVERSITY AFFILIATE that generated the patent or copyrights, as per the terms of this Agreement.

- D. There will be an Industrial Advisory Board (IAB) composed of one representative from each COMPANY. This board will make 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. The CENTER bylaws will be adopted at the first meeting of the IAB.
- E. The CENTER reserves the right to publish in scientific or engineering journals and/or present in professional meetings the results of any research performed by CENTER. The CENTER will submit any proposed publication or presentation to each COMPANY in writing, containing results of the research program of the CENTER. COMPANY shall have the right to request a delay in publication for a period not exceeding ninety (90) days from the date of submission to COMPANY, in order to identify patentable subject matter and to identify any inadvertent disclosure of confidential or proprietary information included in the proposed publication, provided that COMPANY makes a written request and justification for such delay within forty five (45) days from the date the proposed publication or presentation is submitted by certified mail to COMPANY. Conference papers will not be subject to this section and are exempt from rights related to publication delay.
- F. All patents derived from inventions conceived or first actually reduced to practice in the course of research conducted by a UNIVERSITY AFFILIATE shall belong to the UNIVERSITY AFFILIATE that generated the invention(s). Said UNIVERSITY AFFILIATE pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, will have ownership of all patents developed from this work, subject to "march-in" rights as set forth in this Act. In the case of inventions having one or more inventors from different UNIVERSITY AFFILIATES, the resulting patents shall be jointly owned by the relevant host academic partner institutions. Additionally, in the event one or more inventors or creators are employees of COMPANIES, such COMPANIES shall be a co-owner of such CENTER IP and shall have all rights afforded a co-owner under US law.

COMPANIES that wish to exercise rights to a royalty-free nonexclusive license to such patents agree to pay their respective portion of the costs associated with application for and maintenance of the patent. CENTER agrees that CENTER sponsors in good standing and fulfilling Membership status pursuant to Section E at the time of disclosure are entitled to said nonexclusive royalty-free license. COMPANY will have the right to sublicense the intellectual property of the patents to its subsidiaries and affiliates. If only one COMPANY seeks a license,

that COMPANY may obtain an exclusive, fee-bearing license from the UNIVERSITY AFFILIATE that owns the patent rights. COMPANY shall declare their intentions to license the patents in writing and submit to UNIVERSITY AFFILIATE by certified mail within thirty (30) days from the date that COMPANY received notice from UNIVERSITY AFFILIATE. No response indicates there is no interest from the COMPANY to license the patent.

- G. Copyright registration shall be obtained by the UNIVERSITY AFFILIATES having ownership of software developed through the CENTER. The UNIVERSITY AFFILIATE will grant a royalty-free non-exclusive license to COMPANIES that are CENTER sponsors in good standing at the time of disclosure and request such a license. 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 AFFILIATE, 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 AFFILIATE that owns the copyright rights.
- H. Any royalties and fees received by a UNIVERSITY AFFILIATE under this Agreement, over and above expenses incurred, shall be distributed according to the policy of said UNIVERSITY AFFILIATE.
- I. 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.
- J. No party is assuming any liability for the actions or omissions of any other party as a result of this Agreement. COMPANY will indemnify and hold UNIVERSITY AFFILIATES harmless against all claims, liability, injury, damages or costs, including reasonable attorney fees, 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 or expense results from the negligence of the COMPANY's agents or employees.
- K. This Agreement is the sole and entire agreement between the parties relating to the subject matter hereof, and supersedes all prior understandings, agreements, and documentation relating to the subject matter hereof. This Agreement may be modified, amended, supplemented or waived only by an instrument executed by the authorized representatives of both parties. Vendor understands and agrees that any such modification, amendment, supplement or waiver must be signed for the University by its treasurer or assistant treasurer.

- L. Neither party may assign this Agreement, and/or any of its rights or obligations hereunder, without the prior written consent of the other party, and any such attempt at assignment shall be void.
- M. Except for gross negligence and willful acts such as fraud, defamation, larceny, and willful destruction of property, in no event shall either party be liable to the other for incidental, consequential, special or indirect damages or lost business profits, regardless of the form of action, whether in contract, tort (including negligence), breach of warranty or otherwise, even if a party has been advised as to the possibility of same, arising out of or relating to this agreement.
- N. This Agreement, and the validity, interpretation, construction and enforceability hereof, and all rights and obligations of the parties, whether arising under this Agreement or otherwise, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its principles of conflict of laws. The sole and exclusive jurisdiction and venue for resolution of any disputes between the parties shall be in the state and federal courts located in Boston, Massachusetts, and each of the parties hereby submits to, and waives objection to, the jurisdiction and venue of such courts.

UNIVERSITY
 Name _____
 Title _____
 Signature _____
 Date _____
 For _____
 UNIVERSITY

COMPANY
 Name _____
 Title _____
 Signature _____
 Date _____
 For _____
 COMPANY