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KING ABDULLAH UNIVERSITY OF SCIENCE AND TECHNOLOGY  
ACADEMIC EXCELLENCE ALLIANCE

COLLABORATION AGREEMENT

between

KAUST U.S. LIMITED

and

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

dated as of February 1, 2008

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Revised: February 15, 2008

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**PREAMBLE**

This COLLABORATION AGREEMENT (the "Agreement") is made and entered into as of the 1st day of the month of February 2008, by and between:

- a. KAUST U.S. Limited, a corporation, organized and existing under the laws of the State of Delaware, having its principal office in Washington, D.C. ("KAUST US"); and
- b. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a registered non-profit research university, organized and existing under the laws of the State of California, on behalf of the Department of Mechanical Engineering in the College of Engineering, University of California, Berkeley, having its principal office in 320 McLaughlin Hall #1700, Berkeley, California, USA (the "Alliance Partner", each of the Alliance Partner and KAUST US a "Party" and, together, the "Parties").

**RECITALS**

**WHEREAS**, King Abdullah University of Science and Technology ("KAUST") has been established under the laws of the Kingdom of Saudi Arabia as a graduate research institution of science and technology in order to provide an optimal learning environment and equal opportunities to a national and international student body; and

**WHEREAS**, KAUST intends to create and support a diverse community of scholars and to promote the highest academic standards, by establishing the Academic Excellence Alliance comprising scholars from academic institutions around the world; and

**WHEREAS**, KAUST has a non-discriminatory policy for the admission of students; the appointment, promotion and retention of faculty and staff; and all of the educational, administrative and support activities shall be conducted on the basis of equality without regard to race, color, religion or gender.

**WHEREAS**, KAUST US is an Affiliate of KAUST established to provide services within the United States to assist KAUST in fulfilling its intentions and goals, including those stated above; and

**WHEREAS**, the Alliance Partner is dedicated to research and education to advance the understanding of Mechanical Engineering, and to communicating this understanding for the benefit of society, and the Alliance Partner has established a

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Department of Mechanical Engineering (the "Department") that is world-class in accomplishments, stature, and reputation; and

**WHEREAS**, the Parties desire to establish a cooperative relationship, for the intended benefit of the faculty, students and staff of Alliance Partner and KAUST (the "Alliance") under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual understandings and of the covenants and undertakings and for other good and valuable consideration hereinafter set forth the receipt and adequacy of which are hereby acknowledged, it is hereby agreed as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. Except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Activities" means all the research, services, operational support and other activities to be performed by the Alliance Partner pursuant to this Agreement.

"Affiliate" means, with respect to any person or entity, any other person or entity which controls, is controlled by, or is under common control with, such person or entity, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of a person or entity, whether through ownership of securities, by contract or otherwise. KAUST is an Affiliate of KAUST US. Alliance Partner is not an Affiliate of either KAUST or KAUST US for purposes of this Agreement.

"Agreement" shall mean this Agreement as it may be subsequently amended by the Parties for the performance of certain research and other services defined in this Agreement.

"Alliance" shall have the meaning set forth in the Recitals.

"Alliance Partner" shall have the meaning set forth in the Preamble. For the purposes of this Collaboration Agreement, the term "Alliance Partner" as used throughout the Agreement and related proposals, shall mean only a collaborative relationship and does not intend and shall not in any manner mean a legal structure called a general partnership, limited liability, or limited partnership.

"Alliance Partner's Representative" means a party or parties duly authorized by the Alliance Partner to act on behalf of the Alliance Partner, with whom KAUST US may

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consult at all reasonable times, and whose instructions, requests, and decisions issued or made as provided in this Agreement, shall be binding on the Alliance Partner.

“Amendment” means any written modification of this Agreement expressly designated as an amendment and signed by both Parties.

“Collaborative Research” shall have the meaning of all Activities provided for in both the Collaborative Research Grant at Department and Collaborative Research Grant at KAUST in accordance with this Agreement.

“Department” shall have the meaning set forth in the Recitals.

“Effective Date” shall have the meaning set forth in Section 2, Agreement Term.

“KAUST” is King Abdullah University of Science and Technology.

“KAUST Campus” shall mean the KAUST Campus located in the town of Thuwal in the Kingdom of Saudi Arabia or any other branch, center, or offices of KAUST around the Kingdom of Saudi Arabia.

“KAUST US” shall have the meaning set forth in the Preamble.

“KAUST US Representative” means a party or parties duly authorized by KAUST US to act on behalf of KAUST US, with whom the Alliance Partner may consult at all reasonable times, and whose instructions, requests and decisions issued or made as provided in this Agreement shall be binding on KAUST US.

“KAUST Visiting Fellow(s)” shall have the meaning set forth in Section 5, Visiting Fellow Program.

“Party” or “Parties” shall have the meaning set forth in the Preamble.

“Principal Investigator” means the Alliance Partner and or KAUST faculty member with principal responsibility for the design, conduct and reporting of Collaborative Research.

“Research Activities” means the Activities occurring under Research Release as described in Section 13, Research Proposals.

“Research Proposal(s)” means those individual research proposals described in Section 14, Research Proposals.

“Termination Date” shall have the meaning set forth in Section 31, Termination.

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1.2. All dates and periods of time in this Agreement refer to the Gregorian calendar.

2. AGREEMENT TERM.

This Agreement shall be effective on February 1, 2008 (the "Effective Date") and shall remain in effect for a period of five (5) years, until December 31, 2012, unless sooner terminated as provided in Section 31, Termination, of this Agreement. For the avoidance of doubt, no Activities carried out prior to the Effective Date of this Agreement shall be chargeable to KAUST US without the written consent of KAUST US.

3. FACULTY RECRUITMENT AND STUDENT EVALUATION.

3.1. Upon the Effective Date of this Agreement, the Alliance Partner shall immediately pursue and assist KAUST US in the identification and recruitment process of ten (10) KAUST faculty in the fields identified in Section 12, Collaborative Research Areas. The Alliance Partners shall use all reasonable efforts to identify and pursue a recruitment process and nominate five (5) faculty in 2008 and five (5) faculty by September 1, 2009.

3.2. Within thirty (30) days of the Effective Date of the Agreement, the Alliance Partner shall form an Alliance Partner Faculty Search Committee for KAUST Faculty solely dedicated to recruiting KAUST faculty.

3.3. The Alliance Partner Faculty Search Committee for KAUST Faculty shall, if possible, follow the Alliance Partner's normal faculty search processes and procedures on an expedited basis. At a minimum, the Alliance Partner Faculty Search Committee for KAUST Faculty shall comprise three senior faculty members of the Department and chaired by the Head of the Department or his designated representative. KAUST US shall have the right to appoint one representative of KAUST US to be a member of the Faculty Search Committee. The Activities of this Committee shall include the search, interview, evaluation and recommendation of potential individuals as KAUST faculty. KAUST US shall review all Committee recommendations. Neither the Faculty Search Committee nor Alliance Partner shall have any responsibility or rights with respect to the ultimate hiring decision. There shall be no obligation to employ any candidates recommended by the Faculty Search Committee.

3.4. KAUST US and the Alliance Partner shall establish a procedure allowing KAUST US access to and involvement in the search process, procedures and the opportunity to interview and evaluate potential KAUST faculty.

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3.5. During the KAUST faculty search process, the Alliance Partner also shall perform an independent Alliance Partner review and evaluation of candidates and provide KAUST US a written recommendation whether to employ or not to employ each candidate. Alliance Partner shall fully disclose to any KAUST faculty candidate that the Alliance Partner has no responsibility for actual employment decisions, employment offers and explanations of employment benefits. KAUST US shall provide the Alliance Partner a "KAUST Employment Benefits Sheet" of anticipated KAUST employment benefits which may be used in general discussion with potential faculty; however, the KAUST Employment Benefits Sheet shall be subject to change at any time at the discretion of KAUST US.

3.6. As a minimum, the Alliance Partner shall clearly inform any potential KAUST faculty candidate that the faculty position shall ultimately be a position at King Abdullah University of Science and Technology, Thuwal, Kingdom of Saudi Arabia.

3.7. KAUST faculty to be recruited include but are not limited to Professors, Associate Professors and Assistant Professors and others as may be identified to the Alliance Partner by KAUST US. All faculty positions shall have, as minimum qualifications, the qualifications the Alliance Partner normally utilizes for its own like or similar positions. The Alliance Partner shall provide KAUST US with a proposed recruiting strategy to KAUST US within thirty (30) days of the Effective Date of the Agreement.

3.8. Until such time as KAUST has employed ten (10) Alliance Partner nominated faculty, or until December 31, 2010, whichever comes first, and subject to any Alliance Partner policies, procedures or obligations, Alliance Partner shall provide timely and effective faculty search, nomination and recruiting services as long as required by KAUST US with the objective of recommending and nominating qualified faculty which KAUST ultimately may employ.

3.9. In the event that the Alliance Partner's best efforts are unable to recruit and recommend suitable KAUST faculty candidates and the required number of faculty for KAUST are unable to be employed, KAUST US may request Alliance Partner to:

- a. Invite certain Alliance Partner faculty to be Visiting Fellow Professors at KAUST on a semester by semester basis, with the Alliance Partner's prior consent and subject to Alliance Partner leave requirements. Alliance Partner Visiting Fellow Professors shall be entitled to the same benefits and privileges as visiting faculty of equivalent level at KAUST.

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- b. Invite Alliance Partner Lecturers and Postdocs to be at KAUST on a semester by semester basis, with the Alliance Partner's prior consent and subject to applicable leave requirements. Alliance Partner's personnel shall be entitled to the same benefits and privileges as visiting faculty of equivalent level.
- c. Establish two-way interactive communications with audio-video class capability such that the students at KAUST Campus are able to attend and receive KAUST credit for the Alliance Partner classes.

3.10. Alliance Partner may, at Alliance Partner's option, evaluate, interview and nominate students who are eligible to apply to KAUST as graduate students and provide such evaluation to KAUST US.

3.11. The Alliance Partner shall be eligible to nominate up to ten (10) undergraduate students per year who are eligible for the KAUST Discovery Scholarship Program. Acceptance of such nominees to the KAUST Discovery Scholarship Program shall be subject to that program's terms and conditions. The KAUST Discovery Scholarship Program is a KAUST-funded scholarship for students and such students upon acceptance may attend university at the Alliance Partner.

4. CURRICULUM DEVELOPMENT.

4.1. The Alliance Partner understands and acknowledges time is of the essence in developing the required curriculum to enable KAUST to open its doors to students and faculty in September 2009. The Alliance Partner shall deliver to KAUST US a draft and final curriculum for the discipline graduate program.

4.2. Within sixty (60) days after the Effective Date of this Agreement, the Alliance Partner shall form an Alliance Partner Curriculum Development Committee dedicated, subject to Alliance Partner employment responsibilities, to the development of KAUST post graduate curriculums for Mechanical Engineering primarily in the fields of research as set forth in Section 12, Collaborative Research Areas. No later than April 30, 2008, Alliance Partner shall provide KAUST US with a written high level curriculum guide identifying the course titles and course descriptions tailored for KAUST and suitable for publication in the 2009-2010 Course Bulletin of KAUST.

4.3. No later than April 30, 2008, Alliance Partner shall establish a detailed process identifying the course structure leading to post graduate degrees.

5. VISITING FELLOW PROGRAM.

5.1. The Alliance Partner shall host faculty on leave from KAUST as Visiting Fellows within the Department, in accordance with established Alliance Partner policies pertinent to Visiting Fellows from other universities and as consistent with this Agreement. The Alliance Partner shall host as Visiting Fellows until August 31, 2009 all the KAUST faculty recruited by KAUST according to the recommendations of the Alliance Partner as described in Section 3, Faculty Recruitment and Student Evaluation. After August 31, 2009, the Alliance Partner shall host KAUST Visiting Fellows from time to time, as may be requested by KAUST US, for up to three (3) months per calendar year. The Alliance Partner shall provide KAUST Visiting Fellows all the rights and privileges the Alliance Partner normally provides any Visiting Fellow from other universities as consistent with the Agreement.

5.2. Subject to the approval of individual Collaborative Research proposals, the KAUST Visiting Fellows shall engage in Collaborative Research with the Alliance Partner while being hosted by the Alliance Partner.

5.3. KAUST Visiting Fellows shall not be employees or students of the Alliance Partner and shall be subject to the employment policies and procedures (including expense reimbursement policies) of KAUST US or an Affiliate of KAUST US, as KAUST employees on leave from KAUST. KAUST US or an Affiliate of KAUST US shall be liable for the payment of salary and benefits to the KAUST Visiting Fellows. KAUST US may shorten the duration of a Visiting Fellow assignment in its discretion following consultation with Alliance Partner.

5.4. The Alliance Partner shall participate in an annual technical symposium to be held at KAUST.

5.5. The Alliance Partner faculty shall serve as external members of the KAUST Thesis Committees.

5.6. Subject to applicable Alliance Partner policies and faculty responsibilities, three (3) to six (6) Alliance Partner faculty shall visit KAUST for a period of one (1) week each semester and present seminars, review research programs, teach courses and other programs as may be requested. Reasonable effort shall be given to coordinating and obtaining synergies from travel to and from the Kingdom of Saudi Arabia.

5.7. The Alliance Partner shall provide office facilities, comparable to those provided to Alliance Partner personnel of the same level, for the KAUST Visiting Fellows.



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6. KAUST EVALUATION PROGRAM.

The Alliance Partner shall, at a specific time to be determined by KAUST US and the Alliance Partner, but not earlier than September 2010 and once in 2012, form a KAUST Program Evaluation Committee composed of senior Department faculty. The KAUST Program Evaluation Committee shall visit the KAUST campus and provide a written evaluation of the then current KAUST Mechanical Engineering programs, curriculum and faculty. The KAUST Program Evaluation Committee shall provide a preliminary report of its findings and recommendations prior to departing the KAUST campus and a final written report within ninety (90) days of the conclusion of the visit to the KAUST campus.

7. ALLIANCE OPERATIONS AND SUPPORT

7.1. KAUST US shall fund the Alliance Operations and Support which shall have a Total Budget of \$3,368,000.00. The Alliance Partner agrees to undertake and perform the Alliance Operations and Support Activities described in this Section 7.

7.2. With the Alliance Operations and Support budget, the Alliance Partner shall commit fifty percent (50%) of a Senior Faculty member's time, one (1) full-time Executive Administrator and one (1) full-time Administrative Assistant to support the Activities as may be necessary. The Alliance Partner also shall provide reasonable assistance to employees of KAUST US or its Affiliates who are engaged in collaborative research and allow access to research facilities, libraries and such other areas to facilitate the research subject to established Alliance Partner policies and procedures.

8. REIMBURSABLE COST.

8.1. Alliance Partner shall pursue Faculty Recruitment and Student Evaluation, Curriculum Development, Visiting Fellows Program and other Activities in the performance of this Agreement and KAUST US shall reimburse Alliance Partner the third party invoiced cost of such activities which may include but is not limited to travel, travel related cost, recruiting, advertisement and other such cost; however such reimbursement is contingent upon the pre-approval of any expenditure to be reimbursed by KAUST US, third party invoice documentation accompanying the Alliance Partners invoice to KAUST US, and Section 22, Allowable Cost.

8.2. KAUST US shall reimburse Alliance Partner the cost of high-speed Internet connection and digital video-conferencing link capability between the Alliance Partner and KAUST US and KAUST to facilitate regular electronic meetings, seminars, discussions, and research interactions concerning the Activities included in this Agreement. The audiovisual equipment and video conferencing shall have the

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capability of communicating and connecting the Alliance Partner, KAUST US, KAUST and other applicable research institutions around the world. KAUST US may from time to time organize video teleconference meetings among its Alliance Partners to share “best practices”, create synergies and coordinate recruiting activities.

9. COLLABORATIVE RESEARCH GRANT AT DEPARTMENT.

9.1. The Collaborative Research Grant at Department shall have a Total Budget of \$10,000,000.00. The Total Budget for the Collaborative Research Grant at Department includes all costs to perform the Collaborative Research including but not limited to all work, facilities, operations, support, labor, materials, equipment, travel, indirect cost and other such costs required to perform the Research Activities unless otherwise specified in this Agreement.

9.2. The Alliance Partner agrees that all funds provided by KAUST US as part of a Collaborative Research Grant at Department shall be utilized solely for collaborative research between employees of KAUST (including faculty on leave from KAUST who are hosted by Alliance Partner as Visiting Fellows under Section 5, Visiting Fellow Program and are employees of KAUST US or an Affiliate of KAUST US during that time) and employees of the Alliance Partner, in the area of research as set forth in Section 12, Collaborative Research Areas.

9.3. The Alliance Partner shall periodically submit Research Proposals that set forth the Collaborative Research the Alliance Partner proposes to perform at Department in the research areas as set forth in Section 12, Collaborative Research Areas. Research Proposals shall be submitted using the guidelines in Section 13, Research Proposals and, once approved by KAUST US, shall be funded by KAUST US in accordance with Section 20, Funding.

10. COLLABORATIVE RESEARCH GRANT AT KAUST.

10.1. The Collaborative Research Grant at KAUST shall have a Total Budget of United States \$5,000,000.00. The Total Budget for the Collaborative Research Grant at KAUST includes all costs to perform the Activities at KAUST including but not limited to all work, facilities, operations, support, labor, materials, equipment, travel, indirect cost and other such costs required to perform the Collaborative Research unless otherwise specified in this Agreement.

10.2. The Alliance Partner agrees that all funds provided as part of a Collaborative Research Grant at KAUST shall be utilized solely for collaborative research performed at KAUST between employees of KAUST and employees of the Alliance Partner, in the areas of research as set forth in Section 12, Collaborative

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Research Areas. Funds provided as part of a Collaborative Research Grant at KAUST shall be administered by KAUST.

10.3. The Alliance Partner shall periodically submit Research Proposals that set forth the Collaborative Research the Alliance Partner proposes to perform at KAUST in the research areas as set forth in Section 12, Collaborative Research Areas. Individual Research Proposals shall be submitted using the guidelines attached in Section 13, Research Proposals, and, once approved by KAUST US, shall be funded in accordance with Section 20, Funding.

11. COLLABORATIVE RESEARCH.

11.1. Collaborative Research under Sections 9 and 10 of this Agreement shall be distributed over the term of this Agreement and the Alliance Partner shall exert its reasonable efforts to annually budget \$3,000,000 (\$2,000,000 of Collaborative Research at Department and \$1,000,000 of Collaborative Research at KAUST) worth of individual Research Proposals in each year of the five (5) year period.

11.2. Any unspent budget for Collaborative Research may be carried forward for Collaborative Research.

11.3. The Alliance Partner may suggest or propose the discontinuance or material modification of all or any portion of the research under the Collaborative Research Grant at Department or the Collaborative Research Grant at KAUST when unpromising lines of investigation may appear during the development of the research; however, no discontinuance, material change or modification of the research may occur without the prior written concurrence of KAUST US.

11.4. Major changes or material modification of Collaborative Research may be resubmitted in accordance with Section 13, Research Proposals.

12. COLLABORATIVE RESEARCH AREAS.

The scope of educational and Collaborative Research cooperation between the Alliance Partner and KAUST US shall include but shall not be limited to the following general areas of Mechanical Engineering.

1. Energy and Environment
  - 1.1. Thermal Fluid Sciences and Combustion
  - 1.2. Energy and Environmental Engineering
  - 1.3. Sustainable Green Engineering
2. Advanced Mechanics & Manufacturing

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- 2.1. Solid Mechanics and Materials
- 2.2. Controls, Networked Systems & Dynamics
- 2.3. High Precision Manufacturing
- 2.4. Computational Science
- 2.5. Ocean Engineering
- 3. Advanced Devices
  - 3.1. MEMS & NEMS
  - 3.2. Bio-Engineering (Bio-mechanical Devices)

13. RESEARCH PROPOSALS.

13.1. Each Research Proposal will be in the nature of a Research Release, as described below, and shall be subject to the terms and conditions of the Agreement. A Research Release is an authorization for Research Activities under this Agreement. With the exception of 2008, Research Proposals must be submitted jointly by one or more faculty members of the Alliance Partner and one or more Visiting Fellows. Under no circumstances may a Research Release change or alter in any way the terms and conditions of the Agreement or KAUST US's maximum liability under the Agreement.

13.2. Research Proposals shall consist of a written document that sets forth the minimum requirements identified below, including but not limited to:

- a. The purpose, objective and goals of the research;
- b. The expected outcome, results and the benefits;
- c. Location where the research will take place and identification of facilities required to perform the research;
- d. Identification of the Principal Investigator (the individual primarily responsible for the research) and a list of personnel and students, full or part-time, to be involved in the research, their qualifications, roles, responsibilities and tasks to be performed in the research;
- e. A research implementation plan; and
- f. A detailed budget identifying the total cost of the research, including but not limited to:
  - i. All indirect costs;
  - ii. A proposed payment schedule;

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- iii. The percentage of effort with associated salary and fringe benefit costs for each individual assigned to the research;
- iv. The cost of any materials and equipment specifically identifying any material or equipment with a cost of \$5,000 or more;
- v. Anticipated travel expenses, Alliance Partner shall ensure that each individual Research Proposal budget includes all travel and travel related expenses required to perform the Activities;
- vi. All costs for subcontractor or other work to be performed by someone other than the Alliance Partner;
- vii. A statement as to whether other external funding is to be pursued or is a part of the research and, if so, from whom; and
- viii. Any additional information as may be reasonably required by KAUST US

13.3. Within ninety (90) days after the completion of the activities of the Research Release, the Principal Investigator shall deliver to the Alliance Partner and KAUST US one (1) copy each of a written Final Research Report ("FRR"). The FRR shall be consistent with a high quality academic research report and shall include a summary of the research and the collective findings of the research, along with conclusions and recommendations resulting from the research and proposed future applications for the results of the research.

13.4. If requested by KAUST US, the Principal Investigator shall, at no cost to the Alliance Partner or Principal Investigator, provide a presentation of the conclusions and recommendations contained in the FRR with respect to each Proposal.

14. RESEARCH PROPOSAL APPROVALS.

14.1. The approval process for each Research Proposal shall be the same. KAUST US and the Alliance Partner shall establish a three (3) member Research Proposal Review Committee. Members of the Research Proposal Review Committee shall include the Head of the Department or his designee of the Alliance Partner, a KAUST US appointed representative and an independent external representative. The external representatives shall have qualifications and experience in the general areas of research identified in Section 12, Collaborative Research Areas. The external representative may be nominated by either the Alliance Partner or KAUST US and the Alliance Partner and KAUST US shall mutually agree upon the respective external representative. If the Alliance Partner and KAUST US are unable to mutually agree upon the appointment of the external representative, the Alliance Partner Head of the Department shall appoint the external representative to the extent that no conflict of interest exists. The Committee shall appoint its chair person from among its members.

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14.2. The Research Proposal Review Committee shall create and establish a system and processes to evaluate Research Proposals which includes but is not limited to determining when, how, and where Research Proposals are solicited, submitted for review and evaluated on a pre-agreed criteria. The Research Proposal Review Committee shall ensure that all Research Proposals are fairly considered on the basis of their academic and scientific merits.

14.3. The Research Proposal Review Committee shall finalize its evaluation of Research Proposals and make a prioritized ranking of recommended Research Proposals. Such proposals shall be submitted by the Chairman of the Research Proposal Review Committee to KAUST US for award.

14.4. The Alliance Partner shall administer the day-to-day research activities of the Research Proposals as set forth in this Agreement and all costs incurred by the Alliance Partner to perform this administrative function are included in the Collaborative Research at Department or Collaborative Research at KAUST budgets as applicable.

15. ALLIANCE REVIEWS AND FINANCIAL REPORTING.

15.1. KAUST US and the Alliance Partner shall arrange a meeting for the KAUST Provost, Alliance Partner Executive Vice Chancellor and the Alliance Partner Head of Department (or their designees) in person at least once a year at a site to be mutually agreed in order to discuss the Activities and other matters relating to this Agreement.

15.2. Twice per calendar year, the specific dates to be mutually agreed, the Alliance Partner shall provide an Alliance Review Meeting or audiovisual presentation to identify, review and evaluate the status of research, Activities progress and potential benefits resulting from the Collaborative Research. The Alliance Review Meeting shall include Activities completed during the period covered and the anticipated Activities to be accomplished in the next period.

15.3. Within ninety (90) days after the end of each calendar quarter, throughout the duration of the Agreement, the Alliance Partner shall deliver to KAUST US a written quarterly financial report (the "Quarterly Financial Report") assessing the status of all financial Activities undertaken by the Alliance Partner pursuant to Collaborative Research and the Alliance Operations and Support expenditures.

15.4. The first Quarterly Financial Report shall cover the months of January, February and March 2008. At a minimum, each Quarterly Financial Report shall provide a clear cash flow forecast of and identify expenditures related to the Collaborative Research Grant at Department, Collaborative Research Grant at KAUST

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the Operations and Support Budget requirements and the reimbursable cost pursuant to Section 8, Reimbursable Cost, during the period covered by the Quarterly Financial Report period and the projected total expenditures for the next quarter.

16. INVENTION AND PATENT.

16.1. Alliance Partner shall have title to all inventions conceived or first actually reduced to practice in performance under this Agreement. KAUST US and the KAUST Visiting Fellows shall execute such assignments as may be necessary to effect the foregoing provision.

16.2. Alliance Partner shall grant to KAUST a perpetual, paid-up, royalty-free, non-exclusive license for non-commercial applications of inventions within the Kingdom of Saudi Arabia. This license shall take effect automatically upon invention, without the necessity of any further negotiation or agreement between KAUST and Alliance Partner or other owner(s) of the invention. Alliance Partner shall negotiate in good faith, at KAUST's request, to establish mutually agreeable licensing and royalty terms for commercial use of inventions in or for the benefit of the Kingdom of Saudi Arabia.

16.3. Neither KAUST US nor the Alliance Partner shall be liable for, or otherwise accept responsibility for, any invention, patent or copyright infringements by the other Party or such Party's personnel that may occur during their performance of the Activities and research under this Agreement.

17. PUBLICATIONS.

17.1. Publication and presentation of the results of any research under this Agreement in the appropriate professional, scientific and academic journals and/or other appropriate venue are encouraged by KAUST US. Prior to any publication of any kind which results from research under this Agreement and any Research Release (including but not limited to written, video and internet based publications), but no later than 30 days after the approval of the first individual Research Proposal, the Alliance Partner and KAUST US shall create a mutually agreeable form of acknowledgement of KAUST US funding and disclaimer form for use in such publications.

17.2. The Alliance Partner shall submit a copy of the proposed publication to KAUST US with added information about the publisher, time of intended publication and other such information as KAUST US may reasonably request.

17.3. The publication's author shall have final authority to determine the scope and content of any publication.

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18. PUBLICITY RELEASES.

18.1. Should the Alliance Partner, KAUST US or any of its Affiliates, or any of their subcontractors desire to publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, other than research publications which are governed by Section 17, Publications, the Parties shall first submit such material to the other Party for review; provided, however, that KAUST US or its Affiliates may issue initial announcements and public relations materials regarding the selection of Alliance Partner and general announcements and materials relating to the AEA program. Except as provided in this Section, neither Party shall release any publicity or public relations material relating to this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

18.2. Except as provided in Section 18.1., KAUST US and its Affiliates will not use the name of the University of California, or any abbreviation thereof, or any name of which "University of California" is a part, or any trademarks of the University, in any commercial context, such as may appear on products, in media (including web sites) and print advertisements in cases when such use may imply an endorsement or sponsorship of KAUST or its Affiliates, its products or services. All uses of the University's name, trademarks and logos, therefore, must first receive prior written consent of the University. This policy is in compliance with the State of California Education Code Section 92000.

18.3. Alliance Partner and its Affiliates will not use the name King Abdullah University of Science and Technology or any of its Affiliates, or any abbreviation thereof, or any name of which "King Abdullah University of Science and Technology" or "KAUST" is a part, or any trademarks of KAUST, in any commercial context, such as may appear on products, in media (including web sites) and print advertisements in cases when such use may imply an endorsement or sponsorship of the University of California, its products or services. All uses of the KAUST's name or any of its Affiliates, trademarks and logos, therefore, must first receive prior written consent of KAUST US.

19. TITLE TO DATA.

19.1. The Alliance Partner, its employees or related personnel are encouraged to contribute to professional, scientific and academic publications or publish articles based on the results of the Activities and research performed by the Alliance Partner under this Agreement.

19.2. Any information, memoranda, drawings, maps or writings of a technical nature (collectively referred to as "data") which either KAUST US or its Affiliates or



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Alliance Partner may furnish to the other Party, its employees or related personnel shall remain property of the providing Party.

20. FUNDING.

20.1. KAUST US shall fund the Collaborative Research Grant at Department, Collaborative Research Grant at KAUST, Alliance Operations and Support, and Reimbursable Cost Activities as provided in this Agreement. KAUST US funding to Alliance Partner shall be paid in U.S. Dollars and no adjustment to any funding payments shall be made based on any currency exchange rates or transactions regardless of the Alliance Partner's currency of expenditures or payments.

20.2. KAUST US shall fund Activities relating to the Collaborative Research Grant at Department through Alliance Partner and the Collaborative Research Grant at KAUST through KAUST US or its Affiliates as stated in the approved individual Research Proposals, according to a mutually agreed upon quarterly payment schedule.

20.3. For the Collaborative Research Grant at Alliance Partner, the Alliance Partner shall provide accounting, cost controls and audit traceability, including invoicing, for each approved individual Research Proposal according to its approved accounting procedures, practices and policies. For the Collaborative Research Grant at Alliance Partner, the Alliance Partner shall be responsible for managing the approved individual Research Release budgets and for ensuring that all funds are spent on the Activities as described in each such individual Research Release. The Alliance Partner shall maintain all Research Release funds in a separate account and shall expend such funds for wages, supplies, equipment, travel, indirect costs, and other operational expenses in connection with the Research Release.

20.4. Funds of a Research Release which are not used in a particular quarter may be used in subsequent quarters, and the Alliance Partner may transfer funds within the budget of a Research Release as needed without KAUST US's approval, as long as such transfers do not effect a change in the scope of work of the Research Release.

20.5. Uncommitted and unexpended funds remaining at the termination of the Agreement shall be returned to KAUST US provided funds remaining upon termination or expiration of the Agreement equal \$250.00 or more and any funds retained by the Alliance Partner shall be disposed of in accordance with the Alliance Partner policy.

20.6. KAUST US shall pay Alliance Partner for the Alliance Operations and Support Activities and Reimbursable Costs in quarterly installment payments. Alliance Partner shall submit to KAUST US an installment payment estimate for each quarter at least ninety (90) days prior to the beginning of the quarter.

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21. TRAVEL AND TRAVEL RELATED COSTS.

21.1. Travel and travel related cost pursuant to this Agreement shall be paid and budgeted as follows:

- a. For all Collaborative Research, the travel and travel related costs shall be budgeted in accordance with Alliance Partner's established travel policies and paid as a part of the approved individual Research Release
- b. For all other travel and travel related cost and expenses, KAUST US shall reimburse Alliance Partner on an actual and reasonable expenses basis in accordance with Alliance Partner's travel policies and Section 22, Allowable Costs when pre-approved by KAUST US.

22. ALLOWABLE COSTS.

22.1. Allowable Costs shall in all cases consist only of those reasonable, auditable and verifiable costs, exclusive of profit or fees, necessarily incurred and paid by the Alliance Partner in accomplishing the Activities subsequent to the Effective Date of this Agreement.

22.2. The Allowable Costs shall be reimbursable to the Alliance Partner and shall not be subject to negotiation or adjustment during the term of this Agreement for any reason, including changes in the value of any currency. All Allowable Costs shall be reimbursed in U.S. dollars.

22.3. The Alliance Partner certifies to KAUST US that it is a major research institute providing research services to the United States Government and other agencies world-wide and that the Alliance Partner has accounting and cost control systems audited and approved by the United States Government. The Alliance Partner shall utilize such approved accounting and cost control systems, procedures and processes as are acceptable to the United States Government in the accounting and expenditure of the Budgets for the KAUST US Activities and Research Proposals.

22.4. The Alliance Partner shall provide or make available to KAUST US each year the annual Alliance Partner Report on Federal Awards in Accordance with OMB Circular A-133 and the Alliance Partner shall adhere to acceptable U.S. Government accounting and cost control practices. Should any material change occur to the Alliance Partner's approved U.S. Government's accounting and cost control practices, the Alliance Partner shall notify KAUST US within thirty (30) days of such change. (The

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OMB Circular A-133 report is available online at the Federal Clearinghouse web site <http://harvester.census.gov/sac/> under organization name "University of California".)

22.5. The Alliance Partner shall make available to KAUST US each year its agreed Facilities and Administration (Indirect Costs) Rate Agreement between the Alliance Partner and the U.S. Government (hereafter referred to as the "Negotiation Agreement") specifically covering, among other things, the Alliance Partner Overhead and General and Administrative (G&A) expenses. The current approved Negotiation Agreement effective through June 30, 2011, is attached hereto and expressly made a part of this Agreement. The Alliance Partner shall adhere to the Negotiation Agreement for applicable indirect costs in its billings to KAUST US. The current Negotiation Agreement is available online at <http://www.spo.berkeley.edu/policy/fa.html>.

23. ACCOUNTING OF COSTS AND AUDIT RIGHTS.

The Alliance Partner shall maintain, and shall cause their subcontractors to maintain, according to U.S. Generally Accepted Accounting Principles, books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda and other evidence, sufficient to accurately and properly reflect all Allowable Costs and the disposition of any material, tools or equipment provided by KAUST US or its Affiliates to the Alliance Partner. The foregoing constitutes "records" for the purpose of this Paragraph. Any firm of auditors appointed by KAUST US, shall have access, at all reasonable times during normal business hours, to all of the Alliance Partner's, and its subcontractors' records, personnel, property and operations for the purpose of auditing and verifying costs of the Activities performed under this Agreement; evaluating and testing the systems of internal controls, practices and procedures; and auditing actual costs incurred in support of the Budget(s) for the Activities. Such duly authorized auditors shall have the right to reproduce any such records. The Alliance Partner shall preserve and make available, and shall cause the Alliance Partner's subcontractors to preserve and make available, all such records for a period of two (2) years after completion or termination of this Agreement whichever is later; provided, however, that if any such records are or may be required to resolve any then threatened or pending claim or arbitration pursuant to this Agreement the period of retention shall continue until final disposition of such claims or arbitration.

24. PAYMENT AND INVOICING.

24.1. The Alliance Partner shall submit invoices with supporting financial data to:

Director  
Finance Department  
KAUST U.S. Limited

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888 16th Street NW, Suite 800  
Washington, D. C. 20006  
Telephone: 1-202-683-2013  
Facsimile: 1-202-683-2009

24.2. The Alliance Partner shall submit invoices with supporting documentation for all grant installment payments due under this Agreement and for each Alliance Partner Research or other Proposal identifying Allowable Costs incurred for the performance of Activities completed pursuant to this Agreement and KAUST US shall make payment to the Alliance Partner within thirty (30) days of its receipt and verification of the Alliance Partner's invoices. KAUST US shall make wire transfer payments to the Alliance Partner's bank account as follows:

Bank of America, NA  
ABA / Routing # 0260-0959-3  
Account # 01753-80001  
Account Name: University of California Regents

24.3. Within ninety (90) days of the conclusion of the Agreement, the Alliance Partner shall submit to KAUST US a final invoice which shall be identified as such. In addition to and attached with the final invoice, the Alliance Partner shall provide a signed statement to KAUST US releasing KAUST US and its Affiliates of all obligations and liabilities to the Alliance Partner for Activities associated with or completed pursuant to this Agreement upon payment of such final invoice.

25. PURCHASING AND PROPERTY ACCOUNTABILITY.

25.1. With funding provided by KAUST US, the Alliance Partner shall procure materials, tools, equipment, and all else required for the successful completion of the Activities. The materials shall be new and unused. The Alliance Partner shall supply any special tools needed to install, adjust and maintain the said material.

25.2. The Alliance Partner shall procure the materials, tools and equipment in accordance with its approved procurement systems, policies and procedures. Except as provided in Section 25.3, title to all such materials, tools and equipment shall vest with Alliance Partner.

25.3. The following shall apply only to materials, tools and equipment purchased for use in performing Collaborative Research at KAUST pursuant to Section 10, Collaborative Research at KAUST.

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- a. Title for all materials, tools and equipment purchased by the Alliance Partner pursuant to this Agreement shall pass to KAUST US or its designated Affiliates from the supplier upon payment by KAUST US of the Alliance Partner invoice relating to such materials, tools, and equipment as provided below.
- b. Any Alliance Partner invoice to KAUST US which includes materials, tools or equipment procured by the Alliance Partner for Activities having a cost of \$5,000 or more shall have a copy of the vendor's invoice attached. KAUST US shall not be responsible to reimburse the Alliance Partner for material, tools or equipment that cost in excess of \$5,000 without a vendor's invoice confirming the actual cost of such an item.
- c. The Alliance Partner shall be responsible for tracking and physical inventory of all materials, tools and equipment purchased until such time as the materials, tools and equipment having a purchase price of \$5,000 or more are physically turned over to KAUST US or its designated Affiliate. The Alliance Partner shall provide KAUST US with a full description of the equipment, including model and serial number, acquisition cost (including transportation charges), and the date of the acquisition.
- d. Upon completion of the Activities with respect to each Research or other Proposal, the Alliance Partner shall provide KAUST US with a listing of all equipment purchased with the Budget that is located at the Alliance Partner and for performance of research within Saudi Arabia. This listing shall include the acquisition cost and current estimated value of each piece of equipment (if reasonably available) as well as a recommendation from the Alliance Partner regarding the appropriate disposition of such equipment. If the Alliance Partner wishes to retain the property for its continued use, the Alliance Partner shall also include a statement of the intended use as well as an indication of whether the Alliance Partner is willing to purchase the equipment from KAUST US or its designated Affiliate and the purchase price for such equipment. Upon consideration of information provided by the Alliance Partner and other relevant information, KAUST US shall determine the appropriate disposition of the equipment and shall provide the Alliance Partner with disposition instructions within sixty (60) days of receiving the Alliance Partner's listing of equipment located at its facilities.

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26. NOTICES.

All legal and contractual notices, authorizations and approvals pertaining to this Agreement shall be in writing. Except as otherwise provided below, all notices between the Parties shall be sufficient when delivered in person or sent by telex or facsimile, or by certified or registered air mail, to the below authorized representatives and appropriate address as follows unless otherwise changed by notice in writing to the other Party:

President & Chief Executive Officer  
KAUST U.S. Limited  
888 16th Street, NW  
Suite 800  
Washington, D. C. 20006  
United States

Assistant Director  
Compliance & Special Projects  
Research Administration & Compliance  
2150 Shattuck Avenue, Suite 313  
Berkeley, CA 94704-5940  
United States

Telephone: 1-202-683-2012  
Facsimile: 1-202-683-2009

Telephone 1-510-642-8117  
Facsimile: 1-510-642-8236

27. TECHNICAL REPRESENTATIVES.

All technical and programmatic correspondence and communications pertaining to the Activities under this Agreement shall be between the Representatives identified below. The Representatives shall be contacted at the address under the above Section 26, Notices, unless otherwise changed by notice in writing to the other Party.

Alliance Partner  
Technical Representative:  
Dr. Robert Dibble

KAUST US  
Technical Representative  
Dr. Zaki Y. Al-Harari

28. LIABILITY.

28.1. Alliance Partner shall defend, indemnify and hold KAUST US and its Affiliates (and their respective personnel and agents) harmless from and against any and all claims, losses, expenses or damages arising directly from, or directly related to, the injury to or death of, any person and the damage to, or loss of, any property to the extent resulting from any and all negligent acts or omissions or willful misconduct of the Alliance Partner (or any of the Alliance Partner's personnel or agents) in connection with this Agreement, except to the extent caused by the negligence or willful misconduct of KAUST US or its Affiliates (or any of their respective personnel or agents).

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28.2. KAUST US shall defend, indemnify and hold Alliance Partner (and its personnel and agents) harmless from and against any and all claims, losses, expenses or damages arising directly from, or directly related to, the injury to or death of, any person and the damage to, or loss of, any property to the extent resulting from any and all negligent acts or omissions or willful misconduct of KAUST US or its Affiliates (or any of their respective personnel or agents) in connection with this Agreement, except to the extent caused by the negligence or willful misconduct of the Alliance Partner (or any of its personnel or agents).

28.3. Neither Party shall be liable to the other Party for any consequential, indirect, special or punitive damages, including the loss of use, profit or product whether such loss is based, or claimed to be based, upon any breach of either Party's obligations under this Agreement, or whether such loss is based, or claimed to be based, upon any negligent act or omission of a Party, its personnel, agents or appointed representatives.

29. INSURANCE.

29.1. The Alliance Partner shall carry and maintain at all times during the performance of this Agreement such insurance, including self insurance, in amounts and in terms that are normal and customary for a major research institution in the United States, and prescribed by California law.

29.2. KAUST US shall carry and maintain at all times during the performance of this Agreement such insurance, including self insurance, in amounts and in terms that are normal and customary for the operations that it is conducting in the United States.

30. CONFLICT OF INTEREST.

30.1. Except for customary promotional material and occasional business entertainment limited in value in any instance to the reasonable cost of a business meal, and other than as specifically authorized under the terms of this Agreement, the Alliance Partner for the Department of Mechanical Engineering, as represented by the signatory to this Agreement shall not give, offer, or accept, and represents to the best knowledge of the signatory that it has not given, offered or accepted, directly or indirectly, any money, personal services, credit or other thing of value, to or from:

- a. KAUST US or its Affiliates;
- b. any of their agents, independent contractors or subcontractors; or
- c. the employees of any of the foregoing,

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in order to influence the award of this or any other Agreement that has been, or may be, awarded by KAUST US or any of its Affiliates, or their terms, performance, administration, extension or termination.

30.2. Any violation of this provision shall constitute a substantial breach of this Agreement which, without prejudice to KAUST US's right to enforce any other remedy provided by law, shall empower KAUST US to terminate this Agreement.

31. TERMINATION.

Either Party may at any time and at its sole convenience terminate this Agreement, or any part of the Activities, by giving thirty (30) days advanced written notice to the other Party specifying the extent and the effective date of the termination ("Termination Date"). Should KAUST US terminate this Agreement or any part of the Activities, the Alliance Partner shall immediately stop performance of the Activities that is the subject of the termination notice, unless otherwise directed by KAUST US within thirty (30) consecutive days of the Termination Date. KAUST US shall pay the Alliance Partner all amounts properly due and payable for terminated Activities up to the Termination Date including costs incurred and non-cancelable costs. Should the Alliance Partner terminate this Agreement, KAUST US's liability to the Alliance Partner shall be discharged upon payment to the Alliance Partner of all amounts properly due and payable for terminated Activities up to the Termination Date.

32. CONFIDENTIAL INFORMATION.

32.1. It is contemplated that the work of this Agreement can be carried out without the disclosure of one Party's confidential information to the other Party. However, should it become necessary to disclose confidential information, the providing Party will notify the receiving Party in advance and in writing. All confidential information will be clearly marked as such in writing and the Parties agree to protect each other's confidential information with the same degree of care as they would their own.

32.2. The Parties each undertake to use reasonable endeavors to keep confidential and not to disclose to any third party (other than an Affiliate) or to use themselves, other than for the purposes of the Agreement or as permitted under Sections 9, 10 and 11 of this Agreement, any confidential information in any form provided by the other Party.

32.3. Each of the Parties undertakes to use reasonable endeavors to disclose Confidential Information of the other only to those of its officers, employees, students,



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agents and contractors, and those of its Affiliates, to whom and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement and to ensure that all such personnel are bound by terms of confidentiality equivalent to those contained herein.

32.4. The obligations contained in this Section 32 shall survive the expiry or termination of this Agreement for any reason for a period of five (5) years but shall not apply to any Confidential Information which:

- a. Is publicly known at the time of disclosure to the receiving Party;
- b. After disclosure becomes publicly known otherwise than through a breach of this Agreement by the receiving Party, its officers, employees, agents or contractors;
- c. Can be shown by reasonable proof by the receiving Party to have reached its hands otherwise than by being communicated by the other Party including being known to it prior to disclosure, or having been developed by or for it wholly independently of the other Party or having been obtained from a third party without any restriction on disclosure on such third party of which the recipient is aware, having made due enquiry;
- d. Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving Party, provided that, where practicable, the disclosing Party is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purposes of such compliance; or
- e. Is approved for release, in writing, by an authorized representative of the disclosing Party.

33. FORCE MAJEURE.

33.1. If either Party is rendered unable, wholly or in part, by force majeure to perform its obligations under this Agreement, the performance of such obligations by such Party, so far as they are affected by force majeure shall be excused from the inception of any such inability until it is corrected, but for no longer period. The Party claiming an inability to perform shall immediately after the occurrence of the force majeure, notify the other Party verbally of the nature, date of inception and expected

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duration of the force majeure and the extent to which it will prevent the Party giving such notice from performing its obligations under this Agreement. The Party giving notice shall confirm such notification in writing as soon as practicable. The Party claiming inability to perform shall promptly correct such inability to the extent it may be corrected through the exercise of reasonable diligence.

33.2. The term "force majeure" as used in this Agreement shall mean any act, event, cause or occurrence rendering a Party unable to perform its obligations which is not within the reasonable control of such Party.

33.3. Should the Activities be delayed for more than sixty (60) days as a result of force majeure, KAUST US may terminate this Agreement or the portion of the Activities involved pursuant to Section 31, Termination. Except for certain costs incurred after the sixtieth (60th) day as a result of termination of the Activities as specifically provided in Section 31, Termination, neither Party shall be liable to the other for costs incurred by the other as a result of any delay or failure to perform arising out of force majeure.

34. CHOICE OF LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of California.

35. CLAIMS, DISPUTES AND ARBITRATION.

35.1. The Alliance Partner shall inform KAUST US promptly following the occurrence or discovery of any item or event which the Alliance Partner knows, or reasonably should know, is likely to result in a claim or request for additional compensation under this Agreement, or to constitute a dispute between the Parties. KAUST US and the Alliance Partner shall endeavor to satisfactorily resolve the matter and should it not be resolved to the Alliance Partner's satisfaction, the Alliance Partner shall forthwith deliver a written notice of claim with all supporting documentation in triplicate to KAUST US.

35.2. The Alliance Partner shall notify KAUST US within a reasonable time of a claim or dispute, and will supply KAUST US with information sufficient to enable KAUST US to evaluate the Alliance Partner's position.

35.3. KAUST US will evaluate any claim submitted by the Alliance Partner. Should the Alliance Partner and KAUST US be unable to agree upon a settlement of any claim, KAUST US will advise the Alliance Partner in writing of its determination.

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The matter shall then be treated as an unresolved dispute in accordance with paragraph 35.4 of Section 35, Claim, Disputes and Arbitration.

35.4. Any controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof shall, if not finally settled by mutual agreement of the Parties thereto, be settled by non-binding arbitration using the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified or supplemented under this Section. If after non-binding arbitration occurs, the controversy, claim or dispute is not resolved, the Parties are free to exercise all other legal and equitable right.

35.5. Should any other provision of this Agreement or any further agreement which may result from it be null and void by force of law, such nullity shall not affect the validity of the foregoing applicable law and non-binding arbitration provisions.

35.6. Should any dispute arise between KAUST US and the Alliance Partner during the Alliance Partner's performance of the Activities, the Alliance Partner shall, unless KAUST US directs otherwise, continue to perform the Activities provided that KAUST US shall continue to pay all invoices when and as due for Activities performed by the Alliance Partner that are unrelated to the dispute between the Parties.

36. EXPORT CONTROLS.

Many items, as well as information, which are essential to research, are also subject to export control laws and regulations of the United States. These laws and regulations apply to research and other activities regardless of the source of funding. The vast majority of exports do not require government licenses, but the Alliance Partner is obligated to ensure that no item or technology is exported without first determining if an export license is required. If required, the Alliance Partner shall obtain any export license required at no additional cost to KAUST US.

37. ENVIRONMENTAL IMPACT.

37.1. The Alliance Partner shall use its best efforts to prevent and take all reasonable precautions to avoid pollution or contamination of the land, air or water arising out of the Alliance Partner's or its subcontractors' performance of the Activities.

37.2. The Alliance Partner shall comply with applicable regulations issued under or by international environmental conventions and regulatory bodies.

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38. GENERAL PROVISIONS.

38.1. This Agreement is not an exclusive agreement and KAUST US or its Affiliates and the Alliance Partner each reserve the right to request and/or enter into agreements with respect to similar research, services or activities from or with other parties.

38.2. The Alliance Partner shall not subcontract any part of the Activities without KAUST US's prior written consent; however, approval of any proposed consultant or subcontractor listed in a Research Proposal shall constitute KAUST's approval for this purpose.

38.3. This Agreement shall not be modified, changed or altered in any manner whatsoever except by Amendment signed by authorized representatives of the Parties.

38.4. Failure of either Party to exercise any of its rights under this Agreement shall in no way constitute a waiver of those rights, nor shall such failure excuse the other Party from any of its obligations under this Agreement. No benefit or right accruing to either Party under this Agreement shall be waived unless the waiver is reduced to writing and signed by both Parties to this Agreement. The waiver, in one instance, of any act, condition or requirement stipulated in this Agreement shall not constitute a continuing waiver or a waiver of any other act, condition or requirement or a waiver of the same act, condition or requirement in other instances, unless specifically so stated.

38.5. The Alliance Partner is and shall be an independent contractor with respect to the Activities under this Agreement. Neither the Alliance Partner nor its personnel are or shall be deemed to be the servants, agents or employees of KAUST US.

38.6. This Agreement shall not give any person not a party to this Agreement any right to enforce its provisions.

38.7. The liability, indemnity and confidentiality provisions of this Agreement shall survive its termination or final settlement. The provisions of this Agreement relating to termination and dispute settlement (including choice of law and arbitration) shall survive its termination, but not its final settlement.

38.8. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have

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executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

39. ENTIRE AGREEMENT.

39.1. This Agreement supersedes all previous agreements, contracts, correspondence, memoranda and understandings between the Parties concerning the Activities hereof and constitutes their entire Agreement relating to the Activities to be performed hereunder. No promise, agreement, representation or modification to this Agreement shall be of any force or effect between the Parties, unless set forth or provided for in accordance with this Agreement or an Amendment.

39.2. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties to this Agreement; however, this Agreement may neither be assigned nor transferred, either in whole or in part, by either Party without first obtaining the written consent of the other Party.

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IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first written above.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: Robert J. Birge

Its: Chancellor, UCB

Date: Feb 26, 2008

KAUST U.S. Limited

By: Andrew J. Guinasso  
Andrew J. Guinasso

Its: President & Chief Executive Officer

Date: February 24, 2008

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Appendix A:

PATENT ACKNOWLEDGMENT  
(Visitor Employed by a Third Party)

This acknowledgment is made by me to The Regents of the University of California, a corporation, hereinafter called "University," in part consideration of my appointment, and of wages and/or salary to be paid to me during any period of my appointment by University, if any, and/or utilization of University research facilities and/or my involvement in project(s) supported by the University and/or receipt of gift, grant, or contract research funds through the University.

By execution of this acknowledgment, I understand that I am not waiving any rights to a percentage of royalty payments received by University, as set forth in the University of California Patent Policy, hereinafter called "Policy."

I also understand and acknowledge that the University has the right to change the Policy from time to time, including the percentage of net royalties paid to inventors, and that the policy in effect at the time an invention is disclosed shall govern the University's disposition of royalties, if any, from that invention. Further, I acknowledge that the percentage of net royalties paid to inventors is derived only from consideration in the form of money or equity received under: 1) a license or bailment agreement for licensed rights, or 2) an option or letter agreement leading to a license or bailment agreement. I also acknowledge that the percentage of net royalties paid to inventors is not derived from research funds or from any other consideration of any kind received by the University. The Policy on Accepting Equity When Licensing University Technology governs the treatment of equity received in consideration for a license.

I acknowledge my obligation to promptly report and fully disclose the conception and/or reduction to practice of potentially patentable inventions to the Office of Technology Transfer or authorized licensing office. Such inventions shall be examined by University to determine rights and equities therein in accordance with the Policy. I shall promptly furnish University with complete information with respect to each.

I acknowledge my obligation to assign to the University inventions and patents that I conceive or develop while employed at the University or during the course of my utilization of any University research facilities or any connection with my use of gift, grant, or contract research funds received through the University.

This agreement is made with the understanding that I am employed by hereinafter called "Employer," to whom I have prior obligations in regard to inventions. Provisions in this agreement concerning my assignment of all rights, title and interest in inventions

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to the University are subordinate to any patent agreement I have signed with my Employer, but only to the degree that a) the University and my Employer have reached or reach agreement on an equitable distribution of such rights, title and interest therein considering the parties' respective contributions to the making of the invention, including, but not limited to, the use of funds, facilities, and personnel and b) the University is able to perform its obligations to government and other third party supports of research as said obligations have been undertaken by University. Further this subordination is limited to inventions in which I am a sole or joint inventor under U.S. patent law and that the subordination extends only to my interest as an inventor or co-inventor and not to the University's interest through co-inventors owing an obligation of assignment to the University. In those cases when, pursuant to this subordination of rights, Employer holds title to inventions that would otherwise be assignable to University under this agreement, Employer hereby grants a non-exclusive royalty-free license to University for its non-commercial research and educational uses of such inventions.

In addition, it is recognized that certain provisions of this Acknowledgement may be subordinate to provisions of a separate agreement(s) between the University and my employer for my utilization of University research facilities and/or my receipt of gift, grant, or contract research funds through the University as specified in such separate agreements(s).

In the event any such invention shall be deemed by University to be patentable or protectable by an analogous property right, and University desires, pursuant to determination by University as to its rights and equities therein, to seek patent or analogous protection thereon, I shall execute any documents and do all things necessary, at University's expense, to assign to University all rights, title, and interest therein and to assist University in securing patent or analogous protection thereon. The scope of this provision is limited by California Labor Code Section 2870, to which notice is given below.

In the event I protest the University's determination regarding any rights or interest in an invention, I acknowledge my obligation: (a) to proceed with any University requested assignment or assistance; (b) to give University notice of that protest no later than the execution date of any of the above-described documents or assignment; and (c) to reimburse University for all expenses and costs it encounters in its patent application attempts, if any such protest is subsequently sustained or agreed to.

I acknowledge that I am bound to do all things necessary to enable University to perform its obligations to grantors of funds for research or contracting agencies as said obligations have been undertaken by University.



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University may relinquish to me all or a part of its right to any such invention, if, in its judgment, the criteria set forth in the Policy have been met.

I acknowledge that I am bound during any periods of employment by University or for any period during which I conceive or develop any invention during the course of my utilization of any University research facilities, or any gift, grant, or contract research funds received through the University.

In signing this agreement, I understand that the law, of which notification is given below, applies to me, and that I am still required to disclose all of my inventions to the University.

1. NOTICE

This acknowledgement does not apply to an invention which qualifies under the provision of Labor Code Section 2870 of the State of California which provides that (a) any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer. (b) to the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

In any suit or action arising under this law, the burden of proof shall be on the individual claiming the benefits of its provisions.

Employee/Guest Name (Please print): \_\_\_\_\_

Employee/Guest Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Employee/Guest's Employer (Please print): \_\_\_\_\_

Authorized Employer Representative (Please print): \_\_\_\_\_

Signature of Authorized Employer Representative: \_\_\_\_\_

Date: \_\_\_\_\_