SIPfoundry Higher Education Program (HEP) Membership Agreement

This AGREEMENT is entered into by and between SIPfoundry, a not-for-profit corporation with a principal office located at The Carriage House, 8 Lorum Street, Newburyport, MA 01950, and ……..
('the Institution'), an institution of higher education located in …… (each individually a 'Party' and collectively the 'Parties').

Recitals

Whereas

The provision of high quality, affordable, highly reliable, robust, and advanced unified communication services is essential to the conduct of the Institution's mission;

The Institution desires to collaborate with SIPfoundry in the design and implementation of an upgraded communication environment;

The Institution generally supports a standards-based, open, community-based solution;

SIPfoundry desires institutions of higher education to inform and advance its product development for its sipXecs unified communications product and related products; and

Initial and ongoing investments are required to establish a sustainable business model for SIPfoundry.

Now, therefore, in consideration of the foregoing recitals and the covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, Parties hereby agree as follows:

1. **Term and Termination** – The term of this AGREEMENT shall be from the Effective Date, through July 31, 2011; and shall renew automatically for three additional one-year terms, unless written notification is provided by either Party to the other Party not less than sixty (60) days in advance of June 30 of any renewal year. Should this AGREEMENT be terminated, all future obligations of the Parties become null and void as of date of termination.

2. **Obligations of the Parties**

   2.1 Obligations of the Institution – the Institution agrees to

   a) Diligently pursue activities during the term of this AGREEMENT that will enable sipXecs to become a key component of the Institution's unified communications strategy for its environments;

   b) Consider adopting sipXecs as its communications environment should it meet the criteria set forth in Section 2.3 below and otherwise meet its needs;

c) Explore integrating sipXecs into its environment, contribute code developed by Institution employees and contribute its technical expertise at no cost to SIPfoundry for the benefit of the community of sipXecs users;

d) Appoint an individual to participate in the the sipXecs Policy committee (SPC) and the sipXecs Technical Committee as defined below in Section 3 of this AGREEMENT; and

e) Pay to SIPfoundry the HEP program membership fees due as specified on Exhibit A attached hereto.

f) Through execution of a Contribution Agreement attached as Exhibit D, to agree that all contributions to, or relating to, SIPfoundry code shall be licensed back to SIPfoundry and SIPfoundry shall own all such intellectual property rights and the rights to distribute such contributions, subject to the open source licenses prescribed by the SIPfoundry Board of Directors.

2.2 Obligations of SIPfoundry (the 'Services') – SIPfoundry agrees to

a. Provide to the Institution the source code under the standard terms and conditions of open source and according to the open source licenses used by the sipXecs project
b. Provide to the Institution technical support, such as advising the Institution on installing the software and integrating the software into its environment, up to ten hours annually;
c. Make annual software maintenance available providing timely patches, enhancements, and upgrades for the sipXecs software;
d. Provide a roadmap for the Institution to participate in product development;
e. Appoint an individual from the Institution to participate as a member of the sipXecs Policy Committee (SPC) and appoint an individual from the Institution to participate as a member of the sipXecs Technical Committee (STC) as specified in Section 3 of this AGREEMENT; and
f. At the discretion of the SIPfoundry board of directors and by mutual agreement with an authorized member or the SPC, engage an authorized third party to provide technical services in support of requirements by the Institution that cannot otherwise be met on a timely basis or under the terms of the SIPfoundry charter.

2.3 Collaborative objectives

a) The Parties shall work together to develop services in addition to voice communications, such as advanced conferencing (voice, video and web), unified and instant messaging, integration with existing billing systems, presence, and mobility;

b) The Parties will pursue a communications solution that will integrate with its existing information technology infrastructure, including email and calendaring, and support a multiplicity of web clients;

c) The Parties will pursue a communications solution that will be easy to implement, support, maintain and upgrade;

d) The Parties will identify third-party providers that can assist with Institution's implementation and provide support for the product;

e) The Parties will pursue a solution that can scale to tens of thousands of users;

f) The Parties will pursue strategies to ensure sustainability of SIPfoundry as a solvent and fiscally stable organization.

3. <u>sipXecs Policy Committee</u> – The obligations of the Parties under this AGREEMENT shall be directed and coordinated by the sipXecs Policy Committee (SPC), which will receive technical advice and input from the sipXecs Technical Committee (STC) and from other sources as it deems appropriate. The SPC and STC shall empower members, take action and hold meetings as set forth in the Bylaws of the sipXecs Policy Committee attached hereto as Exhibit C and incorporated herein by this reference.

3.1 *Responsibilities* ***of the SPC*** – The SPC shall have overall responsibility for the strategic direction, membership, and governance of the collaboration, including establishing and maintaining models for cost for the Services. The SPC may delegate responsibilities and tasks to the STC on either an *ad hoc* or a recurring basis.

3.2 ***sipXecs Technical Committee (STC)*** – The STC shall provide advice and counsel to the SPC, encompassing technical input, evaluating SIPfoundry options, and other technical matters as may arise.

4. <u>Miscellaneous Provisions</u> – Miscellaneous provisions of a legal and detailed nature are included in Exhibit B, which is hereby incorporated into this AGREEMENT by reference.

5. <u>Notices</u> – All notices or other communications which are required or permitted herein will be in writing and sufficient if delivered personally, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows, or if transmitted via electronic mail or facsimile and receipt is confirmed by the recipient.

If to Institution:

……
……
……
……

With a copy to:

_____
_____
_____
_____

If to SIPfoundry:

SIPfoundry
The Carriage House
8 Lorum Street
Newburyport, MA 09159
Attn: Martin Steinmann, President

7. Assignment, Succession – No Party shall assign or otherwise transfer any of its rights or obligations under this AGREEMENT without the express written consent of all other Party, which consent shall not be unreasonably withheld or delayed. Subject to the provisions of this Section 7, each of the Parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

8. Amendment – The terms and conditions in the body of this AGREEMENT may only be modified or supplemented by an instrument in writing executed by duly authorized representatives of each Party. However, the terms and conditions in Exhibit A may from time to time be modified in accordance with this AGREEMENT by mutual agreement and action of the SPC and the SIPfoundry Board, and shall be maintained, preserved and forwarded by the Chair of the SPC to the Chair's successor as set forth herein.

9. Entire Agreement – This AGREEMENT, and the Exhibits referred to below, constitute the entire and final agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to below are an integral part hereof and are hereby incorporated into this AGREEMENT.

Exhibit A –HEP memberships fees.

Exhibit B – Miscellaneous Provisions

Exhibit C – Bylaws of the sipXecs Policy Committee

Exhibit D – Sipfoundry Contributor Agreement

10. Relationship of the Parties – Each Party hereby declares and agrees that it is independent from the others, and will perform its obligations under this AGREEMENT as an independent contractor and not as the agent or employee of the other. The relationship between the Parties created pursuant to this AGREEMENT is strictly a contractual relationship. This AGREEMENT shall not be construed to create any partnership, joint venture, or other agency relationship between the Parties and the Parties may not hold themselves out or represent themselves as such. Each Party has and hereby retains the right to exercise full control of and supervision over the performance of its obligations hereunder and full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such contractual obligations. Each Party will be solely responsible for compliance with all laws and rules and regulations including, but not limited to, employment of labor, hours of labor, working conditions, payment of wages and payment of taxes such as unemployment, social security and other payroll taxes, in addition to any employment benefits claimed by persons furnished by that Party. Each Party will comply with all requirements for withholding and payment of federal, social security, state, provincial, local or other payroll taxes on amounts paid under this AGREEMENT or otherwise.

11. Order of Precedence – The following order of precedence will be followed in resolving any inconsistencies between the terms of this AGREEMENT and the terms of any schedules, exhibits, attachments and other documents attached hereto: (a) first, the terms contained in the body of this

AGREEMENT; (b) then, exhibit C, and (c) then, Exhibit B and (d) Exhibit A.

12. <u>Time is of the Essence</u> – Time of performance is of the essence in this AGREEMENT and is a substantial and material term hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.

……	**SIPfoundry:**
…….	
By:_____	By:_____
……	Dr. Martin J. Steinmann, President
…….	
Date: _____	Date: _____

APPROVED:

By: _____
Authorized Signer

LEGAL REVIEW:
If Required

By: _____
Name of Reviewer

_____
Title of Reviewer

Exhibit A

Higher Education Program Membership Fees

This schedule of HEP membership fees is based upon spring-semester FTE enrollment numbers for the Institution, where such enrollment figures are to derive from the latest data in the Integrated Postsecondary Education Data System (IPEDS, see http://nces.ed.gov/IPEDS/).

Table 1 HEP Membership and Renewal Fee		
FTE Students	**Initial Fee**	**Annual Renewal Fee ($/yr.)**
1-1,250	$10,000	$7,500
1,251-2,500	$12,500	$10,000
2,501-3,750	$15,000	$12,500
3,751-5,000	$25,000	$15,000
5,000-10,000	$40,000	$20,000
10,000-20,000	$65,000	$27,500
20,000-30,000	$100,000	$35,000
Above 30,000	$150,000	$45,000

Initial Fee payable to SIPfoundry is due forty-five (45) days after the effective date of this AGREEMENT. Annual Renewal Fees for each fiscal year are due (45) days after start of the Institution's fiscal year. HEP membership fees for the initial fiscal year shall be pro-rated by the fraction of time remaining in the Institution's fiscal year after the Effective Date of this AGREEMENT.

Exhibit B

Miscellaneous Provisions

1. Default. A Party shall be in default under this AGREEMENT thirty (30) days after it has been given written notice of a breach of this AGREEMENT unless the defaulting Party shall have cured such breach within such thirty (30) days. Notwithstanding the foregoing, where any such breach (other than the payment of money) cannot reasonably be cured within such thirty (30) day period, and the defaulting Party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such breach shall be extended for an agreed upon period of time, not to exceed sixty (60) days from the receipt of written notice, as may be necessary under the circumstances to complete such cure. This extension of time shall not apply to events of default which are, by their nature or severity, incapable of being cured within a reasonable time, or which cause the non-defaulting Party to suffer continuing or irreparable harm if termination of the AGREEMENT is not immediately affected.

Events of default shall include, but not be limited to, a Party's: failure to make any payment when due hereunder, breach of any material provision hereof; the making of a general assignment for the benefit of its creditors; the filing of a voluntary or involuntary petition in bankruptcy or other insolvency protection, or the filing of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution, or similar relief. In addition to the specific remedies provided hereunder, upon any default by a Party after having an opportunity to cure, the non-defaulting Party may: (i) take such action as it determines, in its sole discretion, to be necessary to correct the default; and (ii) pursue any legal or equitable remedies.

2. Dispute Resolution. In the event of any dispute, controversy or claim (collectively, "Claim") arising under, out of, in connection with, or in relation to this AGREEMENT, or the breach, termination, interpretation, validity, enforceability of, any provision of this AGREEMENT, which cannot be resolved through informal discussion and negotiation between the designated representatives of the Parties, such Claim shall first be referred to senior level staff of the respective Parties. If the Claim is still unresolved, it shall be submitted to a neutral third party mediator to be mutually selected by the interested Parties having a stake in the outcome of the dispute. If the affected Parties cannot agree on a mediator, then one shall be selected for them by the Chair of the SPC, if he or she is not the Member representative of any Party involved in the dispute; if the Chair of the SPC is prohibited by this clause from making that selection, then it shall fall to the Vice Chair or Recording Secretary of the SPC, if uninterested in the outcome, in that order. If all of those officers are Member representatives of a Party involved in the dispute, then the mediator shall be selected by majority vote of the uninterested Parties, if any, or in the case of last resort, by majority vote of the SPC upon nomination by any Party. Each party shall bear its own fees and costs incurred in the mediation including fees and costs of its party mediator and its equal share of the fees and costs of the neutral mediator. If the mediator(s) shall certify at any time that it appears unlikely that further mediation will resolve the dispute; or, if no resolution is able to be reached within 90 days after the dispute is submitted to mediation, then the mediation shall terminate. A Party shall not initiate legal action of any form or nature upon any Claim while mediation is proceeding in good faith, unless failure to do so would result in irreparable harm that can only be

prevented or mitigated by filing such an action.

3. Third Parties. This AGREEMENT confers no rights or benefits express or implied of any kind upon any third party.

4. Invalid Portions of this AGREEMENT. If any part of any provision of this AGREEMENT or any other agreement, document or writing given pursuant to or in connection with this AGREEMENT will be invalid or unenforceable under applicable law, said part or provision will be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts or provisions of this AGREEMENT to the extent permitted by law.

5. Waivers. A waiver by any the Parties hereto of any of the covenants, conditions or agreements to be performed by the other will not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

6. Captions and Headings. Captions and section headings are used herein for convenience only and will not be used for the construction or interpretation hereof.

7. Advertising. Any Party will submit to the other affected Party or Parties for their approval all advertising, sales promotion, press releases and other publicity matters relating to this AGREEMENT where another Party's name is mentioned, logo is displayed or language is used from which the connection to the other Party may, in such other Party's reasonable judgment, be inferred. No Party shall publish, issue or use such advertising, sales promotion, press release, or publicity matter, or use any other Party's name as a reference, without prior written approval of the other Party.

8. Records Retention. SIPfoundry agrees to maintain complete and accurate records of all SPC & STC membership fees or other agreed amounts billable to and payments made hereunder in accordance with recognized accounting practices and shall make all such documents and records available to all other interested Parties and the SPC upon reasonable advance notice. SIPfoundry shall retain such records for a period that is consistent with general accounting standards from the date of any Party's final payment.

9. Choice of Law. This AGREEMENT shall be governed under the laws of the Commonwealth of Massachusetts, without reference to its conflicts of laws principles.

10. Authorized Signatory. This AGREEMENT shall not be valid until it has been approved and signed by each Party's authorized signatory(ies).

11. Fund Availability. Financial obligations of the Institution are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

14. Binding Arbitration Prohibited. The Parties do not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

15. Conflict of Interest. The signatories aver that to their knowledge, no employee of the Party has any personal or beneficial interest whatsoever in the service or property described in this AGREEMENT. SIPfoundry has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of SIPfoundry's obligations and SIPfoundry shall not employ any person having such known interests.

Exhibit C

Bylaws of the
sipXecs Policy Committee

ARTICLE 1 – NAME AND ORGANIZATION

Name
The name of the organization is the sipXecs Policy Committee ("SPC").

Organization
The SPC was created by SIPfoundry as a mechanism to solicit and incorporate ideas, opinions and evaluations of the sipXecs communication tools from institutions of higher education who have agreed to participate in the development of sipXecs by execution of the Investing Institution Agreement.

ARTICLE 2 – MEMBERSHIP AND OFFICERS

Membership
The SPC shall consist of one voting member (each an 'SPC Member' and collectively the 'SPC Members') appointed by each Investing Institution and SIPfoundry, who shall each serve for a two-year term while in good standing with the SIPfoundry Higher Education Program membership fees. Initially, each Investing Institution and the SIPfoundry shall appoint its SPC Member to serve until the first meeting of the SPC after June 30, 2011. Thereafter, each Investing Institution and SIPfoundry shall appoint its SPC Members to serve two-year terms starting at the first meeting of the SPC after July 1 of each year. In the event of resignation or inability of an SPC Member to continue to serve, the appointing Investing Institution or SIPfoundry shall appoint a replacement SPC Member to serve the remainder of the term. SPC Members may be reappointed without limitation. In the event of unavoidable conflict of a Member to attend a meeting, the Investing Institution or SIPfoundry may appoint an alternate by notifying the Chair of the SPC, with a notice to all SPC Members, at least 24 hours in advance of any meeting or possible action by the SPC, who may for that meeting act as a SPC Member.

Officers
The SPC shall elect annually, by majority vote, a Chair, a Vice Chair, and a Recording Secretary, each from among the members of the SPC, and each of whom shall serve for a one-year term. The Chair shall be responsible for preparing and distributing meeting agendas, conducting meetings, maintaining, preserving and forwarding records of the SPC including membership rosters, maintenance of the records of Membership Fees paid and owing and other such duties as deemed appropriate by the SPC. The Vice Chair shall assist the Chair in his/her or duties, shall act as the Chair in the absence of the Chair or temporary inability of the Chair to serve, and assume the position of the Chair if the position of the Chair is vacant. The Recording Secretary shall act as the Vice Chair in the absence or temporary inability of the Vice Chair to serve, and assume the position of the Vice Chair if the position of the Vice Chair is vacant. The Recording Secretary shall be responsible for taking and publishing via email, or in a location on the

Internet accessible only to the Parties, minutes of all meetings. A resignation of the Recording Secretary prior to the end of his/her term shall be filled by action of the SPC for the remainder of the term. The Chair, Vice Chair and Recording Secretary shall be elected from the active SPC Members upon nomination by any Member.

ARTICLE 3 – sipXECS TECHNICAL COMMITTEE ("STC")

Organization
The STC is a sub-committee of the SPC organized to provide advice and counsel to the SPC, encompassing technical input, evaluating SIPfoundry options, and other technical matters as may arise. The majority of the STC's business shall be conducted via conference calls, video conferencing, electronic mail, and/or other such online technologies supporting interactivity suitable for a meeting. Face-to-face meetings, if held, shall be scheduled whenever possible to coincide with existing events such as meetings, conferences and the like.

Membership
The STC shall consist of one voting member (each an 'STC Member' and collectively the 'STC Members') appointed by each Investing Institution and SIPfoundry, who shall each serve for a two-year term. Initially, each STC Member to serve until the first meeting of the STC after June 30, 2011. Thereafter STC Members shall serve two-year terms starting at the first meeting of the STC after July 1 of each year. In the event of resignation or inability of a STC Member to continue to serve, the appointing party shall appoint a replacement STC Member to serve the remainder of the term. STC Members may be reappointed without limitation. In the event of unavoidable conflict of an STC Member to attend a meeting, the Investing Institution or SIPfoundry may appoint an alternate by notifying the Chair of the STC, with a notice to all STC Members, at least 24 hours in advance of any meeting or possible action by the STC, who may for that meeting act as a STC Member.

Officers
The STC shall annually elect by majority vote, a Chair, a Vice Chair and a Recording Secretary, each from among the members of the STC, and each of whom shall serve for a term of nominally one year. The Chair shall be responsible for preparing and distributing meeting agendas, maintaining membership rosters, conducting meetings, reporting to and interacting with the SPC, and other such duties as deemed appropriate under these Bylaws or as requested by the Chair of the SPC. The Vice Chair shall assist the Chair in his/her duties, and act as the Chair in the absence of the Chair or temporary inability of the Chair to serve, and assume the position of Chair should the position of the Chair be vacant. The Recording Secretary shall act as the Vice Chair in the absence or temporary inability of the Vice Chair to serve out his or her term, and assume the position of the Vice Chair should the position of the Vice Chair be vacant. The Recording Secretary shall be responsible for taking and publishing via email, or in a location on the Internet accessible only to the Members, minutes of all meetings. A resignation of the Recording Secretary prior to the end of his/her term shall be filled by action of the STC for the remainder of the term.

ARTICLE 4 – MEETINGS

Meeting procedures shall be in accordance with these Bylaws, and where not covered by these Bylaws, shall proceed informally in the spirit of collaboration. Any disputes concerning the conduct of meetings are to be resolved in accordance with Robert's Rules of Order, latest edition. The Chair of either Committee shall schedule meetings without bias or prejudice regarding any Member to accommodate the greatest level of participation by Members, and shall notify all Members of the Committee of the meeting details, including location, time, date, agenda, and handouts relevant to the meeting, at least one week in advance of the meeting date and time. Materials which do not arrive in tim eto give members time to review in advance of a meeting must be sanctioned for action in the meeting by action of the Committee at the meeting. The majority of the Committees' business shall be conducted via conference calls, video conferencing, electronic mail, and/or other such online technologies supporting interactivity suitable for a meeting. Face-to-face meetings, if held, shall be scheduled whenever possible to coincide with existing events such as meetings, conferences and the like.

ARTICLE 5 – QUORUM AND VOTING

Both Committees shall strive for decisions on a consensus basis, but when deemed necessary by the Chair or by action of the SPC or STC, voting shall be conducted. A Quorum shall consist of three-fourths of all Members of such committee, and shall be necessary to conduct business. A motion shall carry upon a simple majority vote of Members of such committee in attendance. Members, or their designated alternate as defined above, must attend the meeting in order to vote (no voting by proxy).

ARTICLE 6 – NEW MEMBERS

From time to time, a new party may petition the SPC to join. One or more Members may bring such petition to the SPC for its consideration and possible action at any meeting of the SPC, including those conducted electronically. Such petition shall address philosophy, strategy, operations, and fiscal matters. Once a Quorum has been established, inclusion of any new party shall require a two-thirds vote of all Members in attendance and such membership shall become effective only after an Investing Institution Agreement with the Party has been executed in writing by SIPfoundry and the new party. SIPfoundry shall execute such an Agreement with each new party so approved by the SPC.

ARTICLE 7 – SIPfoundry BOARD PARTICIPATION

The Chair of the SPC shall serve as a member in full standing with voting privileges on the SIPfoundry Board of Directors.

ARTICLE 8 – AMENDMENTS

These Bylaws may, in whole or in part, be altered, amended, repealed, or added to by a majority vote of the SPC Committee and the SIPfoundry Board at any meeting called for that purpose. Proposed amendments must be submitted to the Recording Secretary to be sent out with meeting notices.

Exhibit D

SIPfoundry, Inc. Contributor Agreement

Contributions to SIPfoundry will be governed by the LGPL open source license unless otherwise accepted by SIPfoundry under a different compatible open source license.

1) Contributor owns, and has sufficient rights to contribute, all source code related material intended to be compiled or integrated with the source code for the sipXecs open source product (the Contribution) which Contributor has ever delivered, and SIPfoundry has accepted, for incorporation into the technology made available under the sipXecs open source project.

2) Contributor hereby assigns to SIPfoundry, Inc. joint ownership in all worldwide common law and statutory rights associated with the copyrights, copyright application, copyright registrations and moral rights in the Contribution to the extent allowable under applicable local laws and copyright conventions. Contributor agrees that this assignment may be submitted by Nortel to register a copyright in the Contribution. Contributor retains the right to use the Contribution for Contributor's own purposes.

3) Contributor understands and agrees that SIPfoundry, Inc. hall have the irrevocable, transferable, sub licensable, world-wide, royalty-free, and perpetual right to make and distribute copies of any Contribution, as well as to create and distribute collective works and derivative works of any Contribution under the Open Source License.

4) Contributor shall identify each Contribution by placing the following notice in its source code adjacent to Contributor's valid copyright notice: Licensed to SIPfoundry under a Contributor Agreement.

5) Contributor is legally entitled to grant the above assignment and agrees not to provide any Contribution that violates any law or breaches any contract.

6) All Contributions accepted under this Agreement will be made available as open source software under the Open Source License. Nothing in this Agreement shall require that the project maintainers maintain the Contribution or propagate the Contribution in future versions of the project software.

7) This Agreement may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and Contributor's acceptance will be deemed binding between the parties. Contributor agrees that it will not contest the validity or enforceability of this Agreement because it was accepted in electronic form.

If executed and returned by mail or fax, sign and date below:

Signed:

Date:

Printed name:

SIPfoundry
open source community.