**UNIVERSITY SOFTWARE DEVELOPMENT AGREEMENT**

**(Research Sponsorship)**

This Software Development Agreement (the "Agreement") is made between The University of Texas \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("University"), a component institution of The University of Texas System ("System") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Sponsor"), having a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. .

[Note: Bracketed material is included to suggest content that will vary with each agreement.]

**RECITALS**

1. Sponsor desires University to develop software [for use in Sponsor's simulation platform for optical fiber transmissions of digitized video signals] (the "Field").
2. University is conducting research in the Field or in areas related to the Field and is willing to develop such Software.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

**1. EFFECTIVE DATE**

This Agreement shall be effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Effective Date").

**2. DEFINITIONS**

1. "Software" shall mean [the computer programs in machine readable object code form and any subsequent error corrections or updates supplied to Sponsor by University pursuant to this Agreement.]

[Depending on the particulars of each agreement, any or all of the following may need to be specified. If they are relevant, they should be used throughout, modifying the standard form as appropriate.]

1. "Acceptance Criteria" means the written technical and operational performance and functional criteria and documentation standards set out in the [project plan.]
2. "Acceptance Date" means [the date for each Milestone when all Deliverables included in that Milestone have been accepted by Sponsor in accordance with the Acceptance Criteria and this Agreement.]
3. "Deliverable" means a deliverable specified in the [project plan.]
4. "Delivery Date" shall mean, [with respect to a particular Milestone,] the date on which University has delivered to Sponsor all of the Deliverables [for that Milestone] in accordance with [the project plan and] this Agreement.
5. "Documentation" means the documents, manuals and written materials (including end- user manuals) referenced, indicated or described in [the project plan] or otherwise developed pursuant to this Agreement.
6. "Milestone" means the completion and delivery of all of the Deliverables or other events which are included or described in [the project plan] scheduled for delivery and/or completion on a given target date; a Milestone will not be considered completed until the Acceptance Date has occurred with respect to all of the Deliverables for that Milestone.

**3. DEVELOPMENT OF SOFTWARE**

1. University will use its best efforts to develop the Software described in [the project plan.] The Software development will be under the direction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or his/her successors as mutually agreed to by the parties ("Principal Investigator") and will be conducted by the Principal Investigator at the University.
2. Sponsor understands that University's primary mission is education and advancement of knowledge, and, consequently, the development of Software must further that mission. University does not guarantee specific results, and the Software will be developed only on a best efforts basis.

**4. COMPENSATION**

[This is entirely subject to negotiation. Consider lump sum payments or royalties, as appropriate.]

**5. CONSULTATION AND REPORTS**

1. Sponsor's designated representative for consultation and communications with the Principal Investigator shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_or such other person as Sponsor may from time to time designate in writing to University and the Principal Investigator ("Designated Representative").
2. During the Term of the Agreement, Sponsor's representatives may consult informally with University's representatives regarding the project, both personally and by telephone. Access to work carried on in University facilities in the course of this Agreement shall be entirely under the control of University personnel but shall be made available on a reasonable basis.
3. The Principal Investigator will submit detailed written monthly progress reports. At the conclusion of this Agreement, the Principal Investigator shall submit to Sponsor a written report summarizing the work. The Principal Investigator shall also submit a comprehensive final report within one hundred twenty (120) days of termination of the Agreement.

**6. CONFIDENTIAL INFORMATION**

1. The parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties for a period of three (3) years after the termination of this Agreement, provided that the recipient party's obligation shall not apply to information that:
	1. is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;
	2. is already in the recipient party's possession at the time of disclosure thereof;
	3. is or later becomes part of the public domain through no fault of the recipient party;
	4. is received from a third party having no obligations of confidentiality to the disclosing party;
	5. is independently developed by the recipient party; or
	6. is required by law or regulation to be disclosed.
2. In the event that information is required to be disclosed pursuant to subsection (6), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

**7. INTELLECTUAL PROPERTY RIGHTS**

[Negotiated on a case-by-case basis.]

**8. WARRANTIES**

University represents and warrants to Sponsor that:

1. the Software is the original work of the Principal Investigator in each and all aspects;
2. the Software and its use do not infringe any copyright or trade secret rights of any third party.

**9. INDEMNITY**

1. University will defend or settle at its own expense any suit or action which may be brought against Sponsor for alleged infringement in the United States of the copyrights or trade secrets of others by reason of the University's design and/or development of the Software, and University will indemnify and hold harmless Sponsor from and against all damages and costs which may be adjudged or decreed against Sponsor on account of such infringement; provided, however, that Sponsor shall have given prompt notice, in writing, to University of any claim of such alleged infringement and of the bringing, or any written threat of the bringing of any such suit or action, and Sponsor shall have permitted University by its counsel to defend or settle the same; and provided, further, that Sponsor shall not settle or compromise any such suit or action without the prior written consent of University. If any Software is finally adjudged to so infringe, or in University's opinion is likely to become the subject of such a claim, University shall at its option, either (a) procure for Sponsor the right to continue using the Software, (b) modify or replace the Software to make it noninfringing, or (c) refund the fee paid, less reasonable depreciation, upon return of the Software. University shall have no liability regarding any claim arising out of: (w) use of other than a current, unaltered release of the Software, unless the infringing portion is also in the then current, unaltered release, (x) use of the Software in combination with non-University software, data or equipment if the infringement was caused by such use or combination, (y) any modification or derivation of the Software not specifically authorized in writing by University, or (z) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF UNIVERSITY AND THE EXCLUSIVE REMEDY FOR SPONSOR RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.
2. Except for the foregoing infringement claims, Sponsor shall indemnify and hold harmless University, its affiliated companies and the officers, agents, directors and employees of the same from any and all claims and damages, losses or expenses, including attorney's fees, caused by any negligent act of Sponsor or any of Sponsor's agents, employees, subcontractors, or suppliers.
3. NEITHER PARTY TO THIS AGREEMENT NOR THEIR AFFILIATED COMPANIES, NOR THE OFFICERS, AGENTS, STUDENTS AND EMPLOYEES OF ANY OF THE FOREGOING, SHALL BE LIABLE TO ANY OTHER PARTY HERETO IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THE PROVISIONS OF THESE TERMS ARE WAIVED.

**10. INDEPENDENT CONTRACTOR**

For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

**11. TERM AND TERMINATION**

1. This Agreement shall commence on the Effective Date and extend for a period of one (1) year, unless sooner terminated in accordance with the provisions of this Section ("Term").
2. This Agreement may be terminated by the written agreement of both parties.
3. In the event that either party shall be in default of its materials obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the thirty (30) day period.
4. Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. As its sole liability upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for appointees for the remainder of their appointment.
5. Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

**12. ATTACHMENTS**

Attachments A and B are incorporated and made a part of this Agreement for all purposes.

**13. GENERAL**

1. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that subject to the approval of University, which may not be unreasonable withheld, Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor's assets or stock upon prior written notice to University, and University may assign its right to receive payments hereunder.
2. This Agreement constitutes the entire and only agreement between the parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
3. Any notice required by this Agreement shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of University to:

UNIVERSITY
ADDRESS
CITY, STATE ZIP
ATTN: (CONTACT PERSON)
FAX:
PHONE:

or in the case of Sponsor to:

SPONSOR
ADDRESS
CITY, STATE ZIP
ATTN: (CONTACT PERSON)
FAX:
PHONE:

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision. Notices and other communications regarding the day-to-day administration and operation of this Agreement shall be mailed (or otherwise delivered), and addressed in the case of University to:

UNIVERSITY
ADDRESS
CITY, STATE ZIP
ATTN: (CONTACT PERSON)
FAX:
PHONE:

or in the case of Sponsor to:

SPONSOR
ADDRESS
CITY, STATE ZIP
ATTN: (CONTACT PERSON)
FAX:
PHONE:

1. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Texas.