

THIS END USER LICENSE AGREEMENT ("Agreement") is a legal contract between Customer ("Customer" or "you") and Wind River Systems, Inc, ("Wind River"). The right to use the Product is granted only on the condition that Customer agrees to the following terms. If Customer does not agree to the terms of this Agreement, then Wind River and its licensors are unwilling to license the Software to Customer and you may not install the Product.

IF YOU HAVE SIGNED A WRITTEN AGREEMENT WITH WIND RIVER FOR THE PRODUCT PROVIDED TO YOU HEREUNDER THE TERMS OF SUCH WRITTEN AGREEMENT WILL SOLELY GOVERN YOUR USE OF SUCH PRODUCT. OTHERWISE, YOUR USE OF SUCH PRODUCT SHALL BE SOLELY GOVERNED BY THE PRODUCT EVALUATION LICENSE AGREEMENT TERMS BELOW.

THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED USE, REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

PLEASE READ THE TERMS CAREFULLY BEFORE CLICKING ON THE "I ACCEPT" BUTTON, AS BY CLICKING ON THE "I ACCEPT" BUTTON YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

1. DEFINITIONS.

1.1 "Approved Host" means the host computer on which Customer is authorized to use the Software pursuant to this Agreement, as specified in the Product documentation.

1.2 "Confidential Information" means (i) the Software, (ii) the technology, ideas, know-how, documentation, processes, algorithms and trade secrets associated with the Product (iii) any access keys related to the Product, and (iv) any other information, whether disclosed orally or in written or magnetic media, that is identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure. Confidential Information shall not include any information which is: a) published or otherwise available to the public other than by breach of this Agreement by Customer; b) rightfully received by Customer from a third party without confidential limitations; c) independently developed by Customer as evidenced by appropriate records; d) known to Customer prior to its first receipt of same from Wind River as evidenced by appropriate records; e) hereinafter disclosed by Wind River to a third party without restriction on disclosure; or f) approved for public release by written authorization of Wind River. If any Confidential Information must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of Customer, Customer shall promptly notify Wind River of the order or request and permit Wind River (at its own expense) to seek an appropriate

protective order.

1.3 "Development Location" means a single specific address of Customer's facility consisting of a single building or multiple buildings on a contiguous campus where the Approved Host is physically located and upon which the Software is first installed and put into use.

1.4 "Feedback" means the results of any evaluation of the Product by Customer, including Customer's opinions, observations, comments, criticisms, and suggested improvements, whether in written or oral form.

1.5 "Hardware" means the reference board, microprocessor emulation and any other hardware contained in the Product (if any).

1.6 "Intellectual Property Rights" means all copyrights, trademarks, trade secrets, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations with respect thereto.

1.7 "Object Code" means computer programming code in the form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.

1.8 "Product" means the Software (whether in Object or Source Code) and any Hardware provided under this Agreement, including any accompanying documentation and updates thereto, provided by Wind River to Customer under this Agreement.

1.9 "Software" means (i) the computer programming code and accompanying documentation, including updates (if any), provided by Wind River under this Agreement, and (ii) modification thereto and full or partial copies thereof, whether such copies are provided by Wind River or made by Customer as permitted under this Agreement (the "Permitted Modifications"). Permitted Modifications shall include without limitation, any additions, adaptations, modifications, improvements, corrections, variations, enhancements, revisions, or interface elements, in any form or medium whatsoever, that is derived in any manner from the Software. The definition of Software includes without limitation the Object Code, the Operating System, Tools, Source Code, or any combination of these. The definition of Software excludes all materials provided by Wind River to Customer to the extent such materials are subject to any of the following licenses: GNU General Public License, GNU Library General Public License, GNU Lesser Public License.

1.10 "Source Code" means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation.

2. LICENSE. Subject to Customer's compliance with the terms and conditions of this Agreement, Wind River hereby grants to Customer a restricted, personal, non-transferable, non-exclusive, limited, internal-use license: (i) to use the Product solely at the Development Location, on the Approved Host and for the sole purpose of internally evaluating the Software; (ii) to use the Software on the Approved Host or solely in conjunction with the Hardware, as applicable; (iii) to modify the Source Code solely to the extent necessary to evaluate the use of the Software in the development of prospective Customer products; and (iv) to reproduce the Software for archive purposes, consistent with Customer's standard archive procedures. Customer shall reproduce and include any and all copyright notices and proprietary rights legends, as such notices and legends appear in the original Software, on any copy of the Software, or any portion thereof, and in any modifications.

3. TESTING; USE OF TEST RESULTS. Customer may evaluate the Software in Customer's day-to-day business environment and in production-like activities, but will not use the Software in critical operations or for any commercial purpose. Customer may disclose any Feedback from its evaluations only to Wind River. Should Customer provide Wind River with Feedback, Wind River will have the right to use such Feedback and related information in any manner it deems appropriate.

4. RESTRICTIONS.

4.1 The Product shall be handled, used and stored, solely at the Development Location. Although the Software may be used either from a single machine or a server, there shall be no external network access of the Software (i.e., by any computers or terminals not located at the Development Location).

4.2 Access to the Product shall be limited to employees of Customer who (i) require access to the Product for the purposes set forth in Section 2, ("License") and (ii) have signed an employee agreement in which such employee agrees to protect third party confidential information with terms no less stringent than those set forth in this Agreement. Customer agrees that any breach by any employee of such employee's obligations under such confidentiality agreements shall also constitute a breach by Customer hereunder. For the purposes of this Agreement, the definition of "employee" shall be as defined for purposes of the U.S. Copyright Act and expressly excludes independent contractors. Customer shall maintain and, upon Wind River's reasonable request, provide to Wind River, the names of all employees who have had access to the Product.

4.3 Customer shall not (i) use the Product, or any portion thereof, for any productive or commercial purpose; (ii) modify, create derivative works of, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or attempt to derive the Source Code of any Software provided to Customer in Object Code; (iii) market, distribute or otherwise transfer copies of the Software to others; (iv) sublicense, rent, lease, loan, timeshare, sell, distribute, disclose, publish, assign or transfer any rights, grant a security interest in, or transfer possession of the Product; (v) reproduce the Software other than as specified in Section 2; or (vi) distribute externally or to any third party any communication that compares the features, functions or performance characteristics of the Product with any other product of Customer's or any third party.

4.4 Customer shall use its best efforts to protect the Product from unauthorized access, reproduction, disclosure or use. In the event Customer becomes aware of any unauthorized use or disclosure of Product, Customer shall notify Wind River immediately in writing and shall give full cooperation, at

Customer's expense, to minimize the effects of such unauthorized use or disclosure.

4.5 UPON TRANSFER OF ANY COPY OF THE PRODUCT TO ANOTHER PARTY, THIS LICENSE WILL AUTOMATICALLY TERMINATE.

4.6 Elements of the Software may contain or be derived from materials of third party licensors ("Third Party Software"). In addition to or in lieu of this Agreement, such Third Party Software may be subject to additional terms, which terms are set forth in the Software Source Code and/or the Third Party Notice file that accompanies the Software. Such terms may include, but are not limited to, the Eclipse Public License, the Academic Free License, the Apache Software License, the Artistic License, the BSD License, the Mozilla Public License and/or the Python License.

5. CONFIDENTIAL INFORMATION. Customer shall not use or disclose any Confidential Information, except as expressly authorized by this Agreement, and shall protect all such Confidential Information using the same degree of care which Customer uses with respect to its own proprietary information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances. Customer's obligations regarding the protection of Confidential Information shall survive any expiration or termination of the Agreement. Customer shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Confidential Information.

6. OWNERSHIP. Wind River and its licensors shall retain exclusive ownership of all worldwide Intellectual Property Rights in and to the Product and any copies and modifications thereof. Customer hereby assigns to Wind River any such rights Customer may have in and to the foregoing. All rights in and to the Product not expressly granted to Customer in this Agreement are expressly reserved for Wind River and its licensors.

7. TERM AND TERMINATION. This Agreement shall commence upon the date the Product is installed (the "Effective Date") and continue for thirty (30) days. This Agreement will immediately terminate upon Customer's breach of this Agreement. Upon termination, Customer shall (i) not use the Product for any purpose whatsoever, (ii) immediately destroy or return all material belonging to Wind River or its licensors, including without limitation all copies of the Product and Wind River Confidential Information then in Customer's possession or control, and (iii) to certify to Wind River in writing that it has done so. These remedies shall be cumulative and in addition to any other remedies available to Wind River. The provisions in Sections 1-Definitions, 5-Confidential Information, 6-Ownership, 7-Term and Termination, 10-Warranty Disclaimer, 11-Limitation of Liability, and 13-General shall survive any termination of this Agreement.

8. KEYS AND ACCESS. Wind River agrees to provide to Customer those Product access keys (the "Keys") which are reasonably necessary to permit Customer to gain access to the Software contained on media shipped to Customer and which Software has been properly licensed to Customer pursuant to a license agreement. All such Keys shall be considered the Confidential Information of Wind River. Notwithstanding anything to the contrary in this Agreement, Customer hereby acknowledges that Customer shall have no right or license to any software shipped to Customer on media as provided above which software is not properly licensed pursuant to a license agreement, that any such software is included therein solely as a matter of administrative convenience, and Customer further agrees not to attempt to gain access to, or permit any third party to attempt to gain access to, such software.

9. AUDIT. Customer agrees to maintain accurate written records of the location and use of each copy of the Product in Customer's possession. To ensure compliance with the terms of this Agreement, Wind River shall have the right, during the term of this Agreement and for six (6) months thereafter, exercisable upon reasonable notice, to conduct an inspection and audit of such records and to obtain true and correct photocopies of such records, during Customer's regular business hours at Customer's offices, and in such a manner as not to interfere unreasonably with Customer's normal business activities.

10. WARRANTY DISCLAIMER. THE PRODUCT IS LICENSED FOR CUSTOMER'S TEMPORARY EVALUATION "AS IS" AND WIND RIVER AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WIND RIVER, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

10.1 THIRD PARTY ACTIONS; SECURITY THREATS. Wind River makes no warranty with respect to any malfunctions or other errors in its hardware or software products caused by virus, infection, worm or similar malicious code not developed by Wind River. Wind River makes no warranty that any hardware or software products will protect against all possible security threats, including intentional misconduct by third parties. Wind River is not liable for any downtime or service interruption, for any lost or stolen data or systems, or for any other damages arising out of or relating to any such actions or intrusions.

11. LIMITATION OF LIABILITY. WIND RIVER AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR THE LIKE) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF WIND RIVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WIND RIVER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED U.S. \$50.00 OR THE AMOUNT (IF ANY) CUSTOMER ACTUALLY PAID TO WIND RIVER UNDER THIS AGREEMENT.

THE WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN WIND RIVER AND CUSTOMER. WIND RIVER WOULD NOT BE ABLE TO PROVIDE THE PRODUCT WITHOUT SUCH LIMITATIONS.

12. EXPORT CONTROL. All software and technical information delivered under this Agreement are subject to U.S. export controls under the Export Administration Regulations (the "EAR") or the International Traffic in Arms Regulations (the "ITAR") and may be subject to export, re-export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations. Customer will not export or re-export the software and technical information, directly or indirectly, to: (1) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria); (2) any end user who Customer knows or has reason

to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in US export transactions by any federal agency of the US government. Some of Wind River's products are classified as "restricted" encryption products under Section 740.17(b)(2) of the EAR and may not be exported or re-exported to government end-users (as defined in Section 772 of the EAR) outside the countries listed in Supplement No. 3 to Part 740 of the EAR without authorization from the U.S. government.

13. GENERAL.

- 13.1 Governing Law and Venue.** This Agreement shall be governed in all respects by the laws of California, without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. All disputes arising under this Agreement shall be brought exclusively in Superior Court of the State of California in San Francisco County or the U.S. District Court for the Northern District of California in San Francisco, California, as permitted by law, provided, however, that the parties shall be entitled to seek injunctive relief in the appropriate forum. Customer consents to the personal jurisdiction of the above courts. In any proceeding or lawsuit brought by Wind River or Customer in connection with this Agreement, the prevailing party shall be entitled to its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.
- 13.2 Government End Users.** All software and any data relating thereto or derived therefrom are "commercial items" as defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.
- 13.3 Injunctive Relief.** Customer agrees that its breach of this Agreement will cause Wind River irreparable harm for which recovery of money damages would be inadequate, and that Wind River shall therefore be entitled to obtain timely injunctive relief to protect Wind River's rights in addition to any and all remedies available at law.
- 13.4 Notices.** All notices under this Agreement shall be: (a) in writing; (b) delivered by personal delivery or certified or registered mail, return receipt requested, and deemed given upon personal delivery or five (5) days after deposit in the mail. Notices shall be sent to the parties at the address where the Product is installed or used or such other address as either party may designate for itself in writing. If the notice is to Wind River, a copy shall also be sent to: Wind River Systems, Inc., 500 Wind River Way, Alameda, California 94501, USA, Attn: General Counsel.
- 13.5 Force Majeure.** Neither party shall be liable for any failure or delay (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, explosions, acts of God, war, governmental action, labor conditions, material shortages or any other cause which is beyond the reasonable control of such party.

- 13.6 Use of Customer's Name.** Wind River may use Customer's name and may disclose that Customer is a licensee of Wind River products or services. Such public disclosures shall not indicate that Customer endorses Wind River products without prior written permission from Customer. Upon Customer's public announcement of product designed with or containing Wind River products or services, Wind River may publicly disclose the nature of the Wind River involvement in said product.
- 13.7 Assignment.** Customer may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, except with the express written consent of Wind River, and any attempted assignment by Customer in violation of this Section is void. Wind River may assign this Agreement, and its rights and obligations hereunder, in its sole discretion.
- 13.8 Miscellaneous.** This Agreement shall not create any agency, employment relationship, partnership or other form of joint enterprise between the parties. Failure to require performance shall not preclude a party from requiring performance in the future. This Agreement constitutes the entire agreement between Customer and Wind River and supersedes all prior oral or written agreements between the parties with respect to the subject matter hereof. The terms and conditions of any purchase order or other instrument issued by Customer in connection with this Agreement shall be of no force or effect. This Agreement may only be amended by a writing signed by the parties that refers explicitly to this Agreement. If a provision of this Agreement is unenforceable or invalid, the provision shall be revised so as to best accomplish the objectives of the parties. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement.

Should you have any questions concerning this Agreement, please write: Wind River Systems, Inc., General Counsel, 500 Wind River Way, Alameda, CA 94501, USA.

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