

## Software Evaluation License Agreement



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THIS SOFTWARE EVALUATION LICENSE AGREEMENT ("Agreement"), is a legal contract between you ("Company") and WIND RIVER SYSTEMS, INC., ("Wind River"). The right to use the Software is granted only on the condition that Company agrees to the following terms. If Company does not agree to the terms of this Agreement, then Wind River and its licensors are unwilling to license the Software to Company, in which case Company may return the package within thirty (30) days after shipment and the amount Company paid for the Software, if any, will be refunded.

PLEASE READ THE TERMS CAREFULLY USING THE SOFTWARE AS BY USING THE SOFTWARE YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

### 1. DEFINITIONS.

1.1 **"Confidential Information"** means (i) the Software, and (ii) the technology, ideas, know-how, documentation, processes, algorithms and trade secrets associated with the Software. 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 Company; b) rightfully received by Company from a third party without confidential limitations; c) independently developed by Company as evidenced by appropriate records; d) known to Company 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 Company, Company shall promptly notify Wind River of the order or request and permit Wind River (at its own expense) to seek an appropriate protective order.

1.2 **"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.

1.3 **"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.

1.4 **"Product"** means the Software (whether in Object or Source Code) and any hardware or other software provided in connection with the Software including any accompanying documentation and updates thereto, provided by Wind River to Company under this Agreement.

1.5 **"Software"** means (i) the computer programming code and accompanying documentation, including updates (if any), provided by Wind River under this Agreement, and (ii) all modifications thereto and full or partial copies thereof, whether such modifications or copies are provided by Wind River or made by Company as permitted under this Agreement. The definition of Software includes without limitation the Object Code, the Source Code, or any combination thereof.

1.6 **"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 Company's compliance with the terms and conditions of this Agreement, Wind River hereby grants to Company a restricted, personal, non-transferable (except as stated herein), non-exclusive, internal-use license: (i) to use the Software solely in conjunction with the Product for the sole purpose of internally evaluating the Software; (ii) to modify the Software Source Code solely to the extent necessary to evaluate the use of the Software in the development of prospective Company products; and (iii) to reproduce the Software for archive purposes, consistent with Company's standard archive procedures. Company 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. RESTRICTIONS.

3.1 Access to the Software shall be limited to employees of Company who (i) require access to the Software 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. Company agrees that any breach by any employee of such employee's obligations under such confidentiality agreements shall also constitute a breach by Company hereunder.

3.2 Company shall not (i) 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 Company in Object Code; (ii) market, distribute or otherwise transfer copies of the Software to others; (iii) sublicense, rent, lease, loan, timeshare, sell, distribute, disclose, publish, assign or transfer any rights, grant a security interest in, or transfer possession of the Software; (iv) reproduce the Software other than as specified in Section 2; or (v) distribute externally or to any third party any communication that compares the features, functions or performance characteristics of the Software with any other product of Company's or any third party.

3.3 Company shall use its best efforts to protect the Software from unauthorized access, reproduction, disclosure or use. In the event Company becomes aware of any unauthorized use or disclosure of Software, Company shall notify Wind River immediately in writing and shall give full cooperation, at Company's expense, to minimize the effects of such unauthorized use or disclosure.

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

4. **CONFIDENTIAL INFORMATION.** Company 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 Company 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. Company's obligations regarding the protection of Confidential Information shall survive any expiration or termination of the Agreement. Company shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Confidential Information.

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

6. **TERM AND TERMINATION.** This Agreement shall commence upon the first date the Software is installed and continue until terminated as set forth herein. This Agreement will immediately terminate upon Company's breach of this Agreement. Upon termination, Company shall (i) not use the Software for any purpose whatsoever, (ii) immediately destroy or return to Wind River all material belonging to Wind River or its licensors, including without limitation all copies of the Software and Wind River Confidential Information then in Company'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, 4-Confidential Information, 5-Ownership, 6-Term and Termination, 8-Warranty Disclaimer, 9-Limitation of Liability, and 11-General shall survive any termination of this Agreement.

7. **AUDIT.** Company agrees to maintain accurate written records of the location and use of each copy of the Software in Company'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 Company's regular business hours at Company's offices, and in such a manner as not to interfere unreasonably with Company's normal business activities.

8. **WARRANTY DISCLAIMER.** THE SOFTWARE IS LICENSED FOR COMPANY'S USE "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.

9. **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 THE LESSER OF U.S.\$50.00 OR THE AMOUNT (IF ANY) COMPANY 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 COMPANY. WIND RIVER WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE WITHOUT SUCH LIMITATIONS.

10. **GENERAL.** Company shall not export or reexport the Software in violation of the export control laws of the United States and/or any other jurisdiction. This Agreement will be governed in all respects by the laws of the State of Delaware as applied to contracts entered into between residents thereof and performed entirely within the State. All disputes arising under this Agreement shall be brought in Superior Court of the State of California in Santa Clara County or the United States District Court for the Northern District of California in San Francisco, California. If any legal action or proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which such party may be entitled. If any provision or provisions of this Agreement are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. This Agreement may not be assigned, sub-licensed, or otherwise transferred (including by way of a merger) by Company without Wind River's prior written consent. Nothing contained herein shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint enterprise between the parties. This Agreement constitutes the complete, final and exclusive statement of the agreement between Wind River and Company, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. No waiver, alteration or modification of the provisions of this Agreement will be valid unless made in writing and signed by a corporate officer of Wind River. The terms and conditions of any purchase order or other instrument issued by Company in connection with this Agreement which add to or differ from the terms and conditions of this Agreement shall be of no force or effect.

**SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS SOFTWARE EVALUATION LICENSE AGREEMENT, PLEASE WRITE TO: WIND RIVER SYSTEMS, INC., GENERAL COUNSEL, 500 WIND RIVER WAY, ALAMEDA, CA 94501. THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES. BY USE OF THE SOFTWARE OR BY INSTALLING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**