



WITTENSTEIN

WITTENSTEIN high integrity systems  
a division of WITTENSTEIN aerospace & simulation ltd

## OPENRTOS EVALUATION SOFTWARE LICENSE AGREEMENT

**ATTENTION:** PLEASE READ THIS DOCUMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE. THE INDIVIDUAL, ORGANISATION OR ENTITY INSTALLING THIS SOFTWARE IS CONSIDERED TO BE THE LICENSEE AND AGREES TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL OR USE THE SOFTWARE.

USERS ARE NOT ALLOWED TO COMMUNICATE OR PUBLISH ANY PERFORMANCE OR STATISTICAL DATA ABOUT THE SOFTWARE SUPPLIED UNDER THIS AGREEMENT.

THIS IS AN EVALUATION LICENSE AGREEMENT THAT PERMITS THE USE OF OPENRTOS COMPILED USING THE XC COMPILER ON THE MICROCHIP PIC32MXxx FOR EVALUATION ONLY.

This License Agreement (the "Agreement") is entered into at the date of installation of the Software (the "Effective Date") by and between the LICENSEE and WITTENSTEIN aerospace & simulation ltd, a corporation trading as WITTENSTEIN high integrity systems ("WHIS"), whose office is at Brown's Court Long Ashton Business Park Yanley Lane, Long Ashton, Bristol, BS41 9LB, UK, and that is registered under the laws of England, who are together referred to hereinafter as Party or the Parties as suits the context.

### BACKGROUND

WHEREAS, WHIS desires to grant the Licensee a license to use WHIS Software under the conditions set out in this Agreement.

WHEREAS, the Licensee wishes to evaluate the Software and agrees to be bound by this Agreement.

The Software and Documentation is protected by intellectual property laws and treaties. The Software is licensed not sold.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

#### 1. DEFINITIONS

The following terms have the meanings set forth below:

**1.1 "Derivative Works"** means any port, work, improvement, modification, alteration, enhancement, translation, adaptation, or documentation, of the Software, in any medium, format or form whatsoever.

**1.2 "Documentation"** means formal documents, including third party documents, supplied by WHIS whether in electronic or printed form, that are intended to explain the use and functionality of the Software during the term of this Agreement. For the avoidance of doubt, documentation does not include emails, verbal communications or advice provided as part of a support and maintenance agreement.

**1.3 "Licensee"** means the legal entity including person, corporation or agency on whose behalf this Agreement is accepted during installation.

**1.4 "Platform"** means the Microchip PIC32MXxx microprocessor operating software compiled using the XC compiler. Where xx in the microprocessor definition means any additional part code identification and the compiler is the version supported by the Software and demonstration software and documentation provided in the installation under which this license was accepted and any subsequent versions supported by releases of the Software provided under a valid Support and Maintenance Agreement.

**1.5 "Product"** means an item containing the Software or Derivative Works that operates on the Platform that is identified to its market in a unique manner, for example by a product code or number or name. In the case of a development project a name, code or identity may be used prior the introduction of a resulting product to the market. This is one Product during its development. However, if the results of this



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development are then utilized in an item or items with different identities to the market this is then considered to be several Products.

**1.6 “Software”** means the OPENRTOS in source code and object code provided in the installation utility under which this license was accepted and such releases as are provided under a valid Support and Maintenance Agreement.

**1.7 “Support and Maintenance”** means a service to Users that provides help with the use and operation of the Software (Support) and updates to the Software (Maintenance).

**1.8 “User”** means a single business unit, subsidiary, division or any similar accounting unit of the Licensee responsible for the evaluation of the Software. The User and Licensee can be the same entity; alternatively, the Licensee may be at a higher level in the hierarchy of the organization in which the User operates. To provide this flexibility under this Agreement, the User is granted rights to evaluate the Software, whereas the Licensee is not.

## **2. LICENSE GRANT**

**2.1** WHIS hereby grants to the Licensee, under all of WHIS’ intellectual property rights a perpetual, royalty-free, non-exclusive, worldwide license for the User to:

- a) use, modify, enhance, develop and compile the Software and create Derivative Works that operate on the Platform as a part of an evaluation of the Software;
- b) make as many copies of the Software and Derivative Works as may be necessary to enable the Licensee to use the Software and Derivative Works as permitted under this Clause 2; provided the Licensee does not:
- c) distribute the Software or Derivative works to third parties in any form;
- d) distribute the Software in source code form or as a part of a library that can be linked into third party software;
- e) reverse engineer all or part of the Software or support, incentivize or encourage others to do so;
- f) communicate or publish any performance or statistical data specific to the Software.

**2.2** The license grant set forth in this Clause 2 includes the right for the Licensee and User to use contractors or subcontractors to perform any or all of the activities set forth in this Clause 2 on behalf of the User provided such contractors or subcontractors perform such activities under an agreement with the Licensee that offers the same protection to WHIS as set out in this agreement.

## **3. SUPPORT AND MAINTENANCE**

**3.1** Limited Support and Maintenance additional to any warranties given in this Agreement may be provided to the User during the first twelve months from the date the Licensee purchased the software license, and, if Licensee purchased Support and Maintenance separately for the Software for a specific period, then during such period. The contact point for Support and Maintenance will be notified to the User by the entity from whom Licensee purchased the license to the Software or the Support and Maintenance for the Software for a given period (“Selling Entity”).

**3.2** If the Selling Entity confirms that Licensee may receive Support and Maintenance for a given period, the User shall:

- a) take care to nominate person(s) competent in the use and application of real time operating systems in embedded software applications to be the contact point for support matters; and
- b) via its nominated contact person(s), provide all the data requested by the Selling Entity or WHIS when making a support request and make all reasonable efforts to support any fault finding or problem resolution process identified by the Selling Entity or WHIS.

## **4. REPRESENTATIONS AND WARRANTIES**

**4.1** WHIS represents and warrants that:

- a) it has all rights and authority to enter into this Agreement and to grant the rights and perform the obligations set forth herein;
- b) entering into and performing under this Agreement will not violate any other agreement to which WHIS is a party;



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- c) to the best of WHIS' knowledge the Software does not infringe any third party intellectual property rights anywhere in the world. Use of the Software does not and will not violate or infringe any copyright, trade secret, trademark, service mark, or other proprietary right. WHIS is not aware of any claims or basis for claims of infringement of other rights of ownership in or to the Software. WHIS shall, at its expense, indemnify, defend and hold Licensee harmless in connection with any claim, or in any suit or proceeding brought or threatened based on a claim that the Software infringes any patent, copyright, intellectual property or other proprietary right, provided WHIS is notified promptly in writing and given sole control of the defense and settlement of any such claim;
- d) no part of the Software is subject to any license that requires as a condition of use, modification and/or distribution of the Software, that the Software, or Products combined and/or distributed with the Software, be; disclosed or distributed in source code form; licensed for the purpose of making derivative works; or redistributable at no charge;
- e) it shall not be liable for any infringement caused solely by a modification to the Software by Licensee.

**4.2 Disclaimer of Warranties.** With the exception of matters expressly provided for under the terms of this agreement, the Parties disclaim all warranties, representations and conditions that are implied, whether by statute, common law or otherwise, including, without limitation, any implied warranty as to satisfactory quality or fitness for a particular purpose.

**4.3 Software Functionality.** If the Licensee reports that the Software does not provide the functions described in the Documentation then within a period of one year from purchase of a License for the Software under this Agreement, WHIS shall, at its sole discretion, rectify the Software or issue a patch or other work around or correct the Documentation.

## **5. TERMINATION**

**5.1 Termination for Material Breach.** Without prejudice to any other right or remedy which may be available to it, either Party may terminate this Agreement by giving written notice in the event that the other Party commits a material breach of this Agreement and fails to cure such breach (where capable of remedy) within sixty (60) days of receiving written notice thereof from the non-breaching Party.

**5.2 Removal of Information.** After termination of this License the Licensee agrees to destroy or otherwise place out of use all Software and Documentation or materials relating to the Software including Derivative Works.

**5.3 Survival.** Upon termination of this Agreement for any reason, Clauses 1, 2, 3, 6, 7 and 8 shall survive.

## **6. OWNERSHIP AND INTELLECTUAL PROPERTY**

**6.1 Ownership.** Except for the license grants set forth in this Agreement, WHIS and its suppliers retain all rights, title, and interest in and to the Software and Documentation.

**6.2 Trade Marks.** No rights to use any trademarks, word marks or service marks of WHIS are granted by this Agreement.

## **7. LIMITATION OF LIABILITY**

**7.1** In no event will either Party be liable to the other Party for any lost profits, lost revenues or loss of business advantage or any indirect, special, incidental or consequential damages arising out of or related to this Agreement, whether based on breach of contract, tort (including negligence) or otherwise, and whether or not such Party has been advised of the possibility of such damage.

**7.2** Except for the obligations set out elsewhere in the Agreement, under no circumstances shall the liability of WHIS to the customer exceed the price paid for the Software license.

**7.3** The limitations specified in this Clause 7 shall survive and apply even if any limited remedy specified in this Agreement is found to have failed in its essential purpose.

## **8. GENERAL PROVISIONS**

**8.1 Assignment.** The Licensee may not assign this Agreement or any rights or obligations hereunder without the prior written consent of WHIS. Consent shall be deemed given when the assignment is to an entity that has become the owner of the Licensee provided the assignee notifies WHIS in writing of the new Licensee Name and Business Unit/Division identity where these are shown in this Agreement.



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**8.2 Notices.** All notices required or permitted under this Agreement shall be made in writing and shall be sent by courier service or by registered or certified mail, addressed to the other Party.

**8.3 Other Activities.** Each Party reserves the right to be engaged in, solely or jointly with third parties, marketing, development, or other activities with respect to technologies or products which are competitive with technologies or products purchased, used or implemented in conjunction with this Agreement and the relationship between the Parties hereunder shall not prevent any such activities by either Party.

**8.4 Spelling.** US spelling may be used in this document and any document referencing it, to aid understanding in the international business environment. US spelled words shall have the equivalent meaning in British English when being interpreted in a British jurisdiction.

**8.5 Governing Law.** This Agreement shall be governed by, interpreted and construed, and performance hereunder shall be determined, in accordance with the laws of England. The application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded. In the event of disputes or claims relating to this Agreement, both Parties agree to seek an amicable settlement. Should an amicable settlement not be reached, then any controversy or claim arising out of or in connection with this Agreement then the Supplier may, at its sole discretion, determine a final settlement by arbitration using an independent recognized arbitration service of its choosing.

**8.6 Relationship of the Parties.** Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, partnership or association between WHIS and the Licensee.

**8.7 Non-Waiver.** The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect in any way, or act as a waiver of, the right to require the other Party to perform in accordance with this Agreement at any other time, nor shall the waiver of either Party of a breach of a provision of this Agreement be held or taken to be a waiver of the provision itself.

**8.8 Severability.** If any term of this Agreement is held to be invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the Parties shall substitute a valid provision with the same intent and economic effect.

**8.9 Headings.** The paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph, or in any way affect such agreements.

**8.10 Disclosure.** The Parties agree that a Party shall not publicly disclose the terms or content of this Agreement without the prior written approval of the other Party.

**8.11 Entire Agreement.** This Agreement and the documents referred to within it contains the Parties' entire understanding with respect to the matters contained within it and supersedes any prior oral or written understandings with respect to the subject matter hereof. There are no promises, covenants or undertakings other than those set forth within this Agreement. This Agreement may not be modified except by written amendment agreed by both Parties.