

## SERVICES TERMS AND CONDITIONS

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- 1) **Quotation.** For all transactions except those in Japan, "Wind River" means Wind River Systems, Inc. For transactions in Japan, "Wind River" means Wind River KK. This Services Quote ("Agreement") is Wind River's offer to provide the services described herein ("Services") and is made on the express condition that the terms of any resultant transaction shall be solely the terms of this Agreement. With respect to Mentoring, public or private training classes, Education Credit and other education offerings purchased under this Agreement, such Services are also subject to Wind River's then-current Supplemental Education Services Terms and Conditions, which can be accessed through Wind River's website: [http://education.windriver.com/content/public/resources/Supplemental\\_Education\\_Services\\_Terms\\_and\\_Conditions.pdf](http://education.windriver.com/content/public/resources/Supplemental_Education_Services_Terms_and_Conditions.pdf) ("Supplemental Education Terms").  
  
Customer's purchase order issuance, use of Deliverables, or signing this Agreement below constitutes Customer's acceptance of this Agreement and the terms herein.
- 2) **Performance of Services.** Wind River will use reasonable commercial efforts to perform the Services and, if applicable, develop any work product resulting from such Services ("Deliverables") described in this Agreement. All Services will be performed by employees, independent consultants, or subcontractors of Wind River ("Wind River Personnel"). All Services and Deliverables are automatically deemed accepted upon delivery from Wind River to Customer. ALL SERVICES, DELIVERABLES OR OTHER INFORMATION AND MATERIALS PROVIDED BY WIND RIVER UNDER THIS AGREEMENT ARE PROVIDED BY WIND RIVER "AS IS," AND WIND RIVER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH SERVICES, DELIVERABLES AND OTHER INFORMATION AND MATERIALS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.
- 3) **Payment Terms and Taxes.** Customer shall pay all invoices within thirty (30) days, upon receipt of credit approval, of the date of such invoice, in U.S. Dollars unless another currency is indicated in this Agreement. Interest on late payments accrues at one-and-one-half-percent (1.5%) per month or partial month, or if lower, the highest rate permitted by law. Customer is responsible for any banking fees associated with Customer's payment. All amounts due hereunder shall be paid without deduction, set-off or counter claim, free and clear of any restrictions or conditions, and without deduction for any taxes, levies, imposts, duties, fees, deductions, withholdings or other governmental charges. If any deduction is required to be made by law, Customer shall pay both the full amount owed plus the amount to be deducted, so that Wind River will receive the same amount as it would have received had the deduction not been required. If Customer is claiming sales or use tax exemption, a certified Tax Exempt Certificate must be attached to an Exhibit or purchase order. Customer shall promptly pay or reimburse all taxes (exclusive of taxes on Wind River's net income), duties and assessments arising from amounts payable to Wind River under this Agreement, or furnish Wind River with evidence acceptable to the taxing authority to sustain exemption therefrom.
- 4) **Term and Termination.** The term of this Agreement will commence upon the date this Agreement is fully executed by the parties below, or, if this Agreement is not executed by the parties, the date of this Agreement ("Effective Date"). The term of this Agreement will continue until the earliest of (a) completion of Services, (b) in cases when the Agreement indicates that unused Services expire after an identified time, upon such expiration date, or (c) such time as the Agreement is earlier terminated pursuant to this Section. In the event of a material breach of a party, which breach is curable and has remained uncured for a period of thirty (30) days from the date of written notice, the non-breaching party may terminate this Agreement, immediately upon providing written notice to the breaching party. If Services are terminated prior to completion, Customer shall pay Wind River for all fees and expenses due as of the effective date of termination. Early termination of unused Services pursuant to Section 4(b) above does not entitle Customer to any credit or refund with respect to the unused Services. The following provisions shall survive any expiration or termination of this Agreement: Sections 1, 2, 4-12.
- 5) **Customer Supplied Prerequisites, Assumptions.** "Customer Supplied Prerequisites" or "CSPs" mean those items (e.g., information, hardware, software and license rights) that Customer is responsible for delivering to Wind River under this Agreement, including without limitation those items identified above. Customer hereby grants to Wind River and any Wind River Personnel a nonexclusive, royalty-free license to make, have made, use, modify, create derivative works, perform, display, execute and reproduce any Customer Supplied Prerequisite for the purpose of performing the Services hereunder. Customer acknowledges that Wind River used the above list of criteria and information in determining the pricing and any schedule quoted hereunder ("Assumptions") and if any Assumption is inaccurate or incomplete it may impact the Services and/or pricing. Wind River shall have no liability for any Customer Supplied Prerequisite in its possession that is used in

accordance with the terms of this Agreement, except to the extent any damage is due to Wind River's gross negligence or willful misconduct.

- 6) **Ownership of Deliverables.** Wind River or its licensors shall retain all right, title and interest, including all intellectual property rights, in and to the Services, Deliverables and other information and materials provided by Wind River to Customer under this Agreement, except as expressly described in the remainder of this Section 6. To the extent the Deliverables description above includes a feasibility study, trade-off analysis or architectural design for any new or existing Customer product and any resulting documentation, and such Deliverable is specifically identified as a "Customer Owned Design/Study Deliverable" above, subject to full payment of the fees hereunder, Customer shall own such Customer Owned Design/Study Deliverable. Customer shall not obtain any ownership rights in data or other information that may be contained in any Customer Owned Design/Study Deliverable that pertain to any Wind River or third party products, Services or Confidential Information. Notwithstanding Customer's ownership rights in a Customer Owned Design/Study Deliverable, in no event shall this Agreement be construed to prohibit, and Wind River shall be entitled to use or develop for any purpose (including without limitation, use in development, manufacture, promotion, sale and maintenance of Wind River's or its customers' products and services), any information which may be retained as know-how, ideas, processes or expertise in the unaided memories of Wind River Personnel.
- 7) **License Rights to Deliverables.** This Agreement does not grant Customer any rights in or to any Wind River standard product, even if delivered to Customer under this Agreement. Any rights or licenses to Wind River standard products shall be determined exclusively under a separate Wind River product license agreement(s) between Customer and Wind River. All software and Wind River Owned Deliverables developed under this Agreement are deemed "Software" under the Wind River software license agreement under which customer licensed the Wind River standard product(s) that are the subject of the Services ("Software License") set forth above. Except as otherwise provided herein, all terms in the Software License shall apply to such Wind River Owned Deliverables (including, without limitation, license grants, and ownership, but specifically excluding Wind River indemnity obligations, warranties, or standard support or maintenance). For purposes of clarification, Customer's foregoing license rights shall pertain only to the final version of any Deliverable developed under this Agreement. With respect to any interim Deliverables and with respect to any final Deliverable in the event no Software License is specified above, Customer's rights in such Deliverable shall be limited to internal noncommercial use solely for the purpose of evaluating the Deliverable. Customer's license rights to Training Materials or Lab Environments (as such terms are defined in the Supplemental Education Terms) provided by Wind River to Customer, if applicable, will be as set forth in the Supplemental Education Terms.

Notwithstanding anything to the contrary in this Section 7, Customer's license rights and obligations in and to any portions of the Deliverable which consist of software, materials, data, or other items (including Open Source Software) owned by a third party and used in the performance of the Services or incorporated into any of the Deliverables ("Third Party Materials") shall be determined in accordance with the applicable agreement or license governing such Third Party Material, regardless of whether obtained with the assistance of Wind River. However, to the extent permitted, Customer shall also comply with any additional obligations under this Agreement with respect to the Deliverables.

The above licenses are subject to Customer's compliance with the terms of this Agreement and payment of all fees and expenses in connection with the Services provided under this Agreement. All rights not expressly granted to Customer in this Agreement are reserved for Wind River and its licensors.

Nothing in this Agreement imposes or purports to impose any restriction on copying, modifying or distributing any portion of software licensed under a Mandatory Open Source License. For purposes of this Agreement, a "Mandatory Open Source License" means any version of the GNU General Public License, the GNU Lesser General Public License, and other substantially similar open source licenses that preclude the imposition of further restrictions on copying, modifying or redistributing materials subject to their terms.

- 8) **Confidential Information.** (a) Wind River Standard Product and Wind River Owned Deliverable; (b) the technology, ideas, know how, processes, algorithms, documentation and trade secrets embodied therein; and (c) other information disclosed by one party (the "*Disclosing Party*") to the other party (the "*Receiving Party*") hereunder, whether disclosed orally, in writing or other tangible form, that is identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure, or, would be reasonably understood to be confidential based upon the nature of the information disclosed and the circumstances of the disclosure. Confidential Information does not include any information which is: (i) published or otherwise available to the public other than by breach of this Agreement; (ii) rightfully received by the Receiving Party from a third party without confidentiality limitations; (iii) independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iv) known to the Receiving Party prior to its first receipt from the Disclosing Party as evidenced by appropriate records; (v) hereinafter disclosed by the Disclosing Party to a third party

without restriction on disclosure; or (vi) approved for public release by written authorization of the Disclosing Party. The Receiving Party shall not use or disclose any Confidential Information of the Disclosing Party, except as authorized by this Agreement, and shall protect all such Confidential Information using the same degree of care that the Receiving Party uses with respect to its own proprietary information, but in no event less than reasonable care. If Confidential Information must be disclosed to a third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of the Receiving Party, the Receiving Party shall: (a) assert the confidential nature of the information in the action or proceeding; (b) promptly notify the Disclosing Party of the order or request; and (c) permit the Disclosing Party (at its own expense) to seek an appropriate protective order. The Parties' obligations with respect to Confidential Information shall survive the expiration or termination of this Agreement for a period of five (5) years after the date of disclosure of such Confidential Information, provided that, any obligations with respect to any source code contained in any Deliverable shall survive in perpetuity.

- 9) **Export Compliance.** All software, Deliverables, and technical information delivered under this Agreement are subject to U.S. Export Administration Regulations (the "EAR") and may be subject to export, re-export or import regulations in other countries. Customer will not use, distribute, transfer, or transmit the Deliverables, software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations. Customer will not, without authorization from the U.S. government, 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. Customer represents and warrants that any item or data Customer provides to Wind River is not strictly designed or modified for military or satellite application. If requested by Wind River, the Customer agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.
- 10) **Government End Users.** The Services and Deliverables, including any software and any related documentation, are each a "commercial item" as that term is 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. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, Customer will provide any Deliverable to U.S. Government End Users only pursuant to, to the extent permitted under, the terms and conditions herein or as permitted under the terms of the applicable Wind River software license agreement.
- 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 ANY SERVICES AND/OR RESULTING DELIVERABLES PROVIDED HEREUNDER EXCEED THE AMOUNTS PAID TO WIND RIVER BY CUSTOMER PURSUANT TO THIS AGREEMENT. The limitation of liability set forth in this section supersedes the limitation of liability set forth in the applicable Wind River product license and support agreement as related to the Services and any Deliverables provided under this Agreement.
- THE LIMITED WARRANTY, LIMITED REMEDIES, WARRANTY DISCLAIMER AND LIMITED LIABILITY SURVIVE TERMINATION OF THESE TERMS AND ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN WIND RIVER AND CUSTOMER. WIND RIVER WOULD NOT BE ABLE TO PROVIDE THE SERVICES OR DELIVERABLES WITHOUT SUCH LIMITATIONS.
- 12) **General.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of California without regard to conflicts of laws principles. All disputes arising under this Agreement shall be brought exclusively in the state or Federal courts located in California. Customer consents to the personal jurisdiction of these courts. 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. Wind River may assign, in whole or in part, its rights and obligations in connection with this Agreement to any Wind River Affiliate. The term "Wind River Affiliate" means any wholly owned subsidiary of Wind River Systems, Inc. Neither this Agreement, nor Customer's rights and obligations under this Agreement may be assigned, sub-licensed, or otherwise transferred in whole or in part by Customer 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 Customer, 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 which specifically refers to amending this Agreement and is signed by duly authorized representatives of Wind River and Customer. Each party agrees that use of pre-printed forms, such as purchase orders or acknowledgements, is for convenience only and all terms and conditions stated thereon are void and of no effect. Neither party shall be liable for any failure or delay (except for the payment of Services fees) 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. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as a signed original of this Agreement.