

WIND RIVER SERVICES TERMS

These Wind River Services Terms (“Agreement”) set forth the terms under which Wind River will provide Services to Customer pursuant to a signed statement of work (“SOW”) between the parties that references this Agreement. Terms used, but not defined herein, shall have the meaning ascribed to them in the SOW.

The parties agree as follows:

1. DEFINITIONS.

- 1.1 “**Affiliates**” means any person or entity that: (a) directly or indirectly Controls, is Controlled by, or is under common Control with, Customer; and (b) will be entering into Exhibits under this Agreement and for each such Exhibit agrees to be bound to all of the terms and conditions of this Agreement in the same manner as Customer. “**Control**” means the beneficial ownership of more than fifty-percent (50%) of the stock or other interest entitled to vote for the election of the Board of Directors or similar managing authority.
- 1.2 “**Assumptions**” means the mutually assumed facts relied upon in developing an Exhibit, and detailed therein.
- 1.3 “**Confidential Information**” means: (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.
- 1.4 “**Customer Supplied Prerequisites**” or “**CSPs**” means those items (e.g., information, hardware, software and license rights) that Customer is responsible for delivering to Wind River.
- 1.5 “**Deliverables**” means the items (e.g., hardware, software, documents and data) to be delivered to Customer by Wind River as a result of the Services, as detailed in an Exhibit.
- 1.6 “**Exhibit**” means an attachment to this Agreement that the parties may mutually execute from time to time that contains a description of the Services.
- 1.7 “**Final Deliverable**” means the final version of a Deliverable delivered by Wind River to Customer as part of the Services, which has been accepted according to Section 9 (“Acceptance”).
- 1.8 “**Intellectual Property Rights**” means all copyrights, trade secrets, trademarks, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide.
- 1.9 “**Mandatory Open Source Software**” means Open Source Software licensed under a license that requires, as a condition of distributing, or providing access to, such software that such software (i) be disclosed or distributed in source code form; and (ii) be licensed by the user to third parties under the same license terms as the original code for the purpose of making and/or distributing derivative (or adapted) works. Mandatory Open Source Software includes, without limitation, any Open Source Software distributed under such licenses as the GNU General Public Licenses (GPL), GNU Lesser General Public Licenses (LGPL), and Affero GNU General Public Licenses. Mandatory Open Source Software does not include Open Source Software licensed under open source licenses that do not require that redistribution or disclosure be in source code form and under the same license terms as the original code, which include without limitation such licenses as the BSD or MIT licenses.

- 1.10 **“Open Source Software”** means any software licensed under an open source license, including without limitation, any open source license listed on the Open Source Initiative website (www.opensource.org).
- 1.11 **“Out-of-Scope Work”** means any Services performed by Wind River under an Exhibit that (a) are outside the description of Services set forth in an Exhibit, or (b) are required as a result of an inaccurate or invalid Assumption.
- 1.12 **“Personnel”** means the employees, independent consultants or subcontractors of Wind River who perform Services for Customer hereunder.
- 1.13 **“Project Change Request”** or **“PCR”** means an amendment detailing changes to an Exhibit.
- 1.14 **“Services”** mean the design, development, integration and/or implementation engineering services Wind River shall use commercially reasonable efforts to provide to Customer under this Agreement and as set forth in an Exhibit.
- 1.15 **“Third Party Materials”** shall mean any software, materials, data, or other items obtained from a third party by Wind River or by Customer and used in the performance of the Services or incorporated into any of the Deliverables (including Open Source Software).
- 1.16 **“Wind River Standard Product”** means any of Wind River’s standard published, or otherwise commercially licensed, or distributed products.

2. SERVICES.

2.1 **General Details.** Wind River shall exclusively determine the method, details and means of performing the Services, including without limitation, utilizing Personnel which Wind River deems appropriate to perform the Services. Customer may inspect the work performed by Wind River upon reasonable notice, and may propose modifications in accordance with Section 3 (Change Control Process). Customer will provide Wind River with information or assistance reasonably necessary to facilitate the proper and timely discharge by Wind River of its obligations under this Agreement, and such information and assistance shall be deemed a Customer Supplied Prerequisite.

2.2 **Affiliates.** The parties agree that, subject to Wind River’s approval in each instance, Affiliates of Customer may also utilize this Agreement and enter into new Exhibit(s) under this Agreement; provided that, each Affiliate agrees to be bound by the terms and conditions of this Agreement and of the applicable Exhibit(s).

3. **CHANGE CONTROL PROCESS.** Either party may request changes to an Exhibit upon notice to the other, and the parties will use Wind River’s PCR form for this purpose. If the changes proposed by Customer are feasible in Wind River’s opinion, Wind River will submit an estimate of the effort required to evaluate Customer’s request, including any fees or expenses associated with such effort. If the request is made by Wind River, Wind River will submit an estimate of the effort required to generate a reasonably detailed proposal. Customer will sign or reject each PCR within ten (10) working days, and return it to Wind River. In the event the Parties are unable to resolve any outstanding issues involving a PCR within five (5) working days after Customer rejects the PCR, Wind River shall proceed with the Exhibit without incorporating any changes proposed in the PCR; provided however, Wind River shall not be liable for any schedule delays in the Exhibit resulting from the change control process.

4. **DELAYS, INACCURATE INFORMATION OR ASSUMPTIONS.** If (a) Customer fails to timely provide a CSP (including any information or assistance required by Wind River), (b) a CSP does not perform as intended, (c) Customer provides inaccurate, incomplete or misleading information to Wind River, (d) an Assumption is incorrect, or (e) Out-of-Scope Work is required; then Wind River shall notify Customer (i) of the impact to the Services, or (ii) that Wind River cannot determine the impact without expending additional effort, and Customer shall pay Wind River the rates set forth in the Exhibit (or Wind River’s then current standard published hourly rates if none are specified) for such additional effort. Wind River will submit a PCR to Customer setting forth Wind River’s good faith estimate of the impact of items (a) – (e) on the fees and/or schedule specified in an Exhibit. Customer shall have ten (10) working days to accept or reject each PCR; provided that, if rejected by Customer, the Parties shall have five (5) working days to resolve the outstanding issues, and if unable to do so, either Party may terminate this Agreement upon written notice to the other Party.

5. **FEES, EXPENSES, AND PAYMENT.**

5.1 **Fees.** Customer shall pay Wind River the fees set forth in the applicable Exhibit. Fees may be charged on a fixed price basis, time and materials basis, or both. For Services charged on a time and materials basis, Wind River will provide only an estimate of the fees in the Exhibit. Customer will pay Wind River the hourly rates set forth in the Exhibit (or Wind River's then current standard published hourly rates if none are specified) for all Services performed on a time and materials basis. For projects to be defined by the parties in writing prior to the start of work ("On Demand Engineering Services"), full payment of the fees owing shall be due upon receipt of the purchase order for the On Demand Engineering Services. Any unused balance of such prepaid On Demand Engineering Services fees will be forfeited without credit or refund on the first (1st) year anniversary of the date on which the applicable purchase order was received.

5.2 **Reimbursement of Travel Expenses/Other Costs.** Unless otherwise indicated in an Exhibit, for any travel that is pre-approved by Customer, Customer will reimburse Wind River for actual travel and living expenses reasonably incurred in performance of the Services. For Services charged on a time and materials basis, travel time for Personnel will be billed at the rates outlined in the Exhibit (or Wind River's then current standard published hourly rates if none are specified). Customer shall also reimburse Wind River for any actual out-of-pocket expenses reasonably incurred by Wind River in the performance of the Services. Wind River will give Customer access to receipts, ledgers and similar records reasonably necessary for Customer to verify the amount and nature of such expenses. Delivery of all items to Customer will be "ex works" (see *Incoterms 2000*), Wind River's initial shipping point. Customer will be billed for any special packaging requests.

5.3 **Payment; Taxes.** Customer shall pay all invoices within thirty (30) days of the date of such invoice, in U.S. Dollars unless another currency is indicated in the Exhibit. 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.

6. **TERM AND TERMINATION.**

6.1 **Term.** The term of this Agreement will commence upon the Effective Date of the SOW and continue until the completion of Services and continue until terminated as set forth herein.

6.2 **Termination.** Either party may terminate this Agreement, or an individual Exhibit, immediately upon providing written notice to the other party, in the event of a material breach of the other party, which breach is curable and has remained uncured for a period of sixty (60) days from the date of written notice; provided that, the written notice must describe the breach in reasonable detail, and provided further, that the cure period for Customer's failure to pay any amounts due to Wind River shall be fifteen (15) days. Either party may terminate this Agreement upon providing written notice to the other party if all Exhibits have been completed, or, pursuant to Section 4 (Delays, Inaccurate Information or Assumptions). Customer may terminate this Agreement or an individual Exhibit for any reason upon thirty (30) days written notice to Wind River.

6.3 **Effect of Termination.** If this Agreement or an Exhibit is terminated prior to completion of Services charged on a time and materials basis, Customer shall compensate Wind River for all Services performed and all expenses incurred prior to termination, as well as any unavoidable costs. If this Agreement or an Exhibit is terminated prior to completion of Services charged on a fixed price basis, Customer shall make all milestone payments due on or before the date Wind River receives Customer's notice of termination, as well as the next milestone payment due. Within sixty (60) days of the date of termination for any reason, Wind River shall

invoice Customer for all outstanding fees, expenses and costs. If an Exhibit is terminated prior to completion, Wind River will deliver to Customer, subject to payment of all outstanding fees, any Deliverables whether or not completed. ALL SUCH DELIVERABLES ARE PROVIDED TO CUSTOMER "AS IS" AND WITHOUT ANY WARRANTY OR INDEMNITY. The following provisions shall survive any expiration or termination of this Agreement in accordance with their respective terms: Sections 1, 5, 6, 7, 8, 10, and 11-14.

7. INTELLECTUAL PROPERTY OWNERSHIP, LICENSING.

7.1 **Customer Supplied Prerequisites.** Customer grants Wind River a nonexclusive, royalty-free license to Wind River and its Personnel to make, have made, use, modify, create derivative works, perform, display, execute and reproduce any CSP solely for the purpose of performing the Services. Customer shall obtain for Wind River and its Personnel all licenses and other rights required to use any Third Party Materials provided together with or as a CSP. All of Customer's rights not expressly granted to Wind River in this Agreement or in an Exhibit with respect to a Customer Supplied Prerequisite are reserved for Customer and its licensors.

7.2 **Customer Owned Deliverables.** Except as otherwise set forth in Section 7.5 (Licensing for Third Party Materials), subject to Customer's payment of all fees and expenses in connection with the Services provided by Wind River under an applicable Exhibit, Wind River irrevocably assigns to Customer all of Wind River's Intellectual Property Rights in any Deliverable developed by Wind River and identified as a "Customer Owned Deliverable" in the applicable Exhibit.

7.3 **Wind River Owned Deliverables.** Wind River and its licensors retain ownership of, and all right, title and interest (including all Intellectual Property Rights) in, any Deliverable that is not expressly identified as a "Customer Owned Deliverable" in the applicable Exhibit ("Wind River Owned Deliverable"). Customer's license to any Wind River Owned Deliverable shall be (i) as specified in the Exhibit under which the applicable Deliverable is delivered, or, (ii) if no license is specified in the Exhibit, Wind River grants Customer a non-exclusive, non-transferable, internal use license, without the right to sublicense, for the sole purpose evaluating such Deliverable in accordance with Section 9 ("Acceptance"). All rights not expressly granted to Customer in this Agreement or in an Exhibit are reserved for Wind River and its licensors.

7.4 **Wind River Standard Product.** 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 by separate product license agreement(s) between Customer and Wind River.

7.5 **Licensing for Third Party Materials.** Customer's license rights and obligations in and to any portions of the Deliverable which consist of 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. For the avoidance of doubt, nothing in this Agreement imposes or purports to impose any restriction on copying, modifying or distributing any portion of any Deliverable that consists of Mandatory Open Source Software.

8. CONFIDENTIAL INFORMATION.

8.1 **Confidential Information.** 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 Wind River Owned Deliverable or Wind River Standard Product shall survive in perpetuity.

- 8.2 **Residual Knowledge.** This Agreement shall not limit either party's right to independently develop or acquire products without use of the other party's Confidential Information, or to license or market any products. Confidential Information shall not include the "Residuals" resulting from access to Confidential Information. "**Residuals**" means information in intangible form that may be retained in the unaided memories of the Receiving Party's employees, independent contractors or subcontractors who have had access to the Confidential Information. A memory will be considered unaided if the individual has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it. Neither party is obligated to restrict the assignment of such persons resulting from the use of Residuals. This Section 8.2 shall not be deemed to grant either party a license under the other party's copyrights or patents.
9. **Acceptance.** Each Exhibit shall contain the acceptance approach for the Deliverables being developed under the Exhibit, which may consist of acceptance criteria set forth in the Exhibit or an Acceptance Test Plan ("ATP") that will be developed under the Exhibit and mutually agreed to by the parties. Except as otherwise set forth in the Exhibit, Wind River shall deliver each Deliverable to Customer once such Deliverable meets the applicable acceptance criteria or ATP and, Customer shall have then ten (10) days after receipt of the Deliverable to verify that the Deliverable meets the acceptance criteria or ATP. Unless Customer notifies Wind River in writing within ten (10) days of delivery to Customer of any non-compliance of the Deliverable with the acceptance criteria or ATP, the Deliverable shall be deemed accepted by Customer. If Customer notifies Wind River within the ten (10) day period of a non-compliance of the Deliverable with the acceptance criteria or ATP, Wind River will use commercially reasonable efforts to remedy the non-compliance, and final acceptance shall occur upon the Deliverable successfully passing all acceptance criteria or ATP, as applicable. If no acceptance criteria or ATP are specified in the Exhibit, the Deliverable shall be deemed accepted by Customer upon delivery by Wind River.
10. **WARRANTY DISCLAIMER.** THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND WIND RIVER MAKES NO ADDITIONAL 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. Some jurisdictions do not allow the limitation or exclusion of implied warranties or how long an implied warranty may last, so the above limitations may not apply to Customer. This warranty provision gives Customer specific legal rights and Customer may have other rights that vary from jurisdiction to jurisdiction.
11. **INDEMNIFICATION BY WIND RIVER.**
- 11.1 **Infringement Claim.** Wind River will indemnify, and at its election, defend at its expense Customer against any claims, suits or proceedings brought by a third party against Customer to the extent that such claim, suit or proceeding is solely based on an allegation that any Final Deliverable, or portion thereof, authored by Wind River under this Agreement directly infringes such third party's copyright or misappropriates a trade secret of such third party (an "Infringement Claim"). Wind River shall pay Customer the damages, costs, and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction (or settlements agreed to in writing by Wind River) as a result of an Infringement Claim. Wind River's obligations under this Section 11 (Indemnification by Wind River) are conditioned on Customer (i) notifying Wind River in writing promptly after Customer becomes aware of an Infringement Claim; (ii) allowing Wind River to have sole control of the investigation, defense and settlement of the Infringement Claim, provided that, Customer may participate in such investigation and defense at its own expense, (iii) cooperating with Wind River in the investigation, defense and settlement of the Infringement Claim (as reasonably requested by Wind River) at Wind River's expense, and (iv) making no admission of liability or fault on behalf of itself or Wind River.
- 11.2. **Remedy.** If as a result of an Infringement Claim, Customer's use of a Final Deliverable is enjoined, or if in the opinion of Wind River is likely to become the subject of such an Infringement Claim, Wind River at its own election and expense will: (a) procure for Customer the right to continue using the Final Deliverable; (b) modify or replace the Final Deliverable that it becomes non-infringing while giving substantially equivalent performance; or (c) if (a) or (b) are not, in Wind River's sole determination, practical using reasonable commercial efforts, then Wind River may terminate its obligation to indemnify Customer under this Section 11 (Indemnification by Wind River) and refund any amounts Customer paid Wind River under the applicable Exhibit for such Final Deliverable less a reasonable charge for Customer's past beneficial use based on

depreciation of the Final Deliverable on a straight line basis over a period of three (3) years from the effective date of the Exhibit.

- 11.3. **Exclusions.** Wind River's defense and indemnification obligation shall not apply if Customer is in breach of this Agreement or to any Infringement Claim to the extent that such Infringement Claim is based on or results from: (i) modifications to a Final Deliverable; (ii) the combination of the Final Deliverable with any other items, hardware, or software; (iii) Wind River's compliance with specifications or instructions provided by Customer; (iv) the use of a Final Deliverable in a manner other than its intended use as described in the Exhibit; or (v) any CSP or Third Party Materials. THIS SECTION 11 (INDEMNIFICATION BY WIND RIVER) STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND WIND RIVER'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT ARISING OUT OF OR RELATED TO ANY DELIVERABLE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT.
12. **INDEMNIFICATION BY CUSTOMER.** Customer will defend at its expense and indemnify Wind River from and against any losses, costs, expenses (including reasonable legal fees) or damages arising from or in connection with any claims, suits or proceedings brought by a third party against Wind River to the extent that such claim, suit or proceeding is in connection with: (i) Wind River's authorized use of any Customer Supplied Prerequisite in the performance of the Services; or, (ii) the use, manufacture, or distribution of any Deliverable. Customer's obligations under this Section are conditioned on Wind River: (i) providing Customer prompt notice of such claim, suit, or proceeding; (ii) tendering to Customer the defense or settlement of any such claim, suit, or proceeding at Customer's expense; and (iii) cooperating with Customer, at Customer's expense, in defending or settling such claim, suit, or proceeding. For clarification, Customer's indemnification obligation will not apply to extent a third party claim is an Infringement Claim that is covered by Wind River's indemnity obligations under Section 11.
13. **LIMITATION OF LIABILITY.** WIND RIVER AND ITS LICENSORS WILL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, REVENUE OR GOODWILL, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OR INTERRUPTION OF BUSINESS, LOSS OF ANTICIPATED SAVINGS, OR LOSS OF DATA, OR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND 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 OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WIND RIVER'S AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS PAID TO WIND RIVER BY CUSTOMER UNDER THE EXHIBIT IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages so this limitation and exclusion may not apply to Customer. THE LIMITED WARRANTY, LIMITED REMEDIES, 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 SERVICES OR DELIVERABLES (INCLUDING ANY OPEN SOURCE SOFTWARE) WITHOUT SUCH LIMITATIONS.
14. **MISCELLANEOUS PROVISIONS.**
- 14.1 **Governing Law, Jurisdiction and Venue.** All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will in all respects be governed by, and construed and interpreted under, the laws of the United States of America and the State of Delaware, without reference to conflict of laws principles. **The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.** All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will be subject to the exclusive jurisdiction of the courts of the State of Delaware or of the Federal courts sitting in that State. Each party submits to the personal jurisdiction of those courts and waives all objections to that jurisdiction and venue for those disputes.
- 14.2 **Injunctive Relief.** Customer agrees that its breach of this Agreement may cause Wind River irreparable harm for which recovery of money damages would be inadequate, and that Wind River shall therefore be entitled to seek timely injunctive relief to protect Wind River's rights in addition to any and all remedies available at law.

- 14.3 **Notices.** All notices under this Agreement shall be: (a) in writing; and (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 addresses set forth in the introductory paragraph, 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 the attention of its General Counsel, Wind River Systems, Inc., 500 Wind River Way, Alameda, California 94501, USA.
- 14.4 **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.
- 14.5 **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.
- 14.6 **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.
- 14.7 **Government End Users.** The Deliverables, including the 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 software to U.S. Government End Users only pursuant to the terms and conditions therein.
- 14.8 **Export Controls.** All software, services deliverables and technical information provided by Wind River under this Agreement are subject to U.S. Export Administration Regulations (the "EAR"), International Traffic in Arms Regulation (ITAR), and/or the export jurisdiction of the European Union (EU) and the Netherlands. Additionally, certain deliverables may be subject to export, re-export or import regulations in other countries ("Trade Control Laws"). Customer agrees to strictly comply with all such Trade Control Laws. Customer will not use, distribute, transfer or transmit the services deliverables, software, or technical information even if incorporated into other products) except in compliance will applicable Export Laws. Customer will not export, re-export, or transfer the software and technical information, directly or indirectly to: (1) any countries that are subject to US and/or EU embargos/sanctions (including and without limitation 1. US EAR Parts 742 and 746. 2. US OFAC Sanctions Lists: Specially Designated Nationals List, Consolidated Sanctions List, and all Other OFAC Sanction Lists, 3. EU Restrictive measures (sanctions) and/or any party not eligible to receive them without prior authorization from the relevant government authority (as applicable); (2) any end user(s) who Customer knows or has reason to know will use them for any purpose prohibited by Trade Control Laws, including, without limitation, in the design, development or production of nuclear, chemical or biological weapons proliferation, or development of missile technology as described in Article 4(1) of the EU 2021/821 and in Part 744 of the US Export Administration Regulations (EAR); (3) a military end-use or by a military end-user in any country subject to any applicable arms embargo per Part 744.21 of the US Export Administration Regulations (EAR). or for a military end-use as defined in Article 4(2) of the EU 2021/821 Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the EU Council or the UN; or (4) process or incorporate Wind River Products and technology into secondary products including supercomputers, which contribute to the design, research, development, manufacture, production, testing, stockpiling or storage, maintenance, construction, operation, or use in any activities as described in Part 744 of the US Export Administration Regulations (EAR).

Customer represents and warrants that any item, including software code and/or technical data Customer provides to Wind River are clearly marked as such in compliance with applicable U.S. and/or Trade Control Laws where (1) it is subject to the International Traffic in Arms Regulation (ITAR), Munitions List, Military List, and/or (2) meets the criteria to be treated as US Department of Defense Controlled Unclassified Information (CUI). Furthermore, Customer agrees that it will not provide such controlled materials to Wind River without prior notice of intent to provide such materials and will only provide them to designated Wind River staff and using approved transmission tools and methods as outlined as part of the Project Technology Control Plan (PTCP) received from the Wind River Proposal Coordinator or Project Manager.

- 14.9 **Counterparts.** 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.
- 14.10 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- 14.11 **General.** This Agreement shall not create any agency, employment relationship, partnership or other form of joint enterprise between the parties. 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 which add to or differ from the terms and conditions of 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; provided that if the provision cannot be so revised, it shall be severed from the remainder of this Agreement, and the remainder of the Agreement shall remain in full force and effect. 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.
- 14.12 **Covered Professional Services.** If Customer is purchasing Wind River professional services related to Wind River’s VxWorks or Helix Virtualization Platform (HVP) products, and Customer’s ultimate end-user is the United States government (US Government), including any contractor for the US Government or sub-tier contractor for any such contractor that purchases or uses VxWorks or HVP that will, in whole or in part, be included in or used in connection with the provision of any product, system, or service by or to the US Government, (“Covered Professional Services”), then the following additional terms apply:
- 14.12.a A customer may allow Wind River to provide the Covered Professional Services from a non-Restricted Country and/or by Personnel who are non-Restricted Persons (as such terms are defined below). The parties will document any such provision regarding Covered Professional Services in this Agreement or the applicable Exhibit hereto.
- 14.12.b A “**Restricted Country**” means: Belarus; Burma; China; Cuba; Iran; North Korea; Syria; Venezuela; Afghanistan; Cambodia; Central African Republic; Cyprus; Democratic Republic of Congo; Ethiopia; Eritrea; Haiti; Iraq; Lebanon; Libya; Russia; Somalia; South Sudan; Sudan; Zimbabwe; and any country not already identified that is added after the Effective Date to the list of countries identified in 22 C.F.R § 126.1(d).
- 14.12.c A “**Restricted Person**” means (1) any Person organized, domiciled, headquartered, or with its principal place of business in a Restricted Country; (2) any natural Person working or residing in a Restricted Country, (3) for natural Persons in the United States, any natural Person with nationality of a Restricted Country who is not a U.S. Person (as defined in 22 C.F.R. § 120.62); and (4) for natural Persons in other non-Restricted Countries, any natural Person with the nationality of a Restricted Country to the extent such determination may be made without violating the data privacy or labor laws of the relevant jurisdiction. Restricted Persons include any Person who is owned, controlled by, or acting on behalf of a Restricted Person.
- 14.12.d “**Person**” means any individual or entity.