

Contract for Software

Entered into Pursuant to the Civil Code, Act no. 89/2012, Coll., section 2079 et sequentes and section 2358 et sequentes, as amended, and the Copyright Act, Act no. 121/2000, Coll., as amended

Contracting Parties:

University of West Bohemia in Pilsen

Address: Univerzitní 8, 306 14 Plzeň, Czech Republic
ID no.: 49777513
Tax ID no.: CZ49777513
Person authorized to act
on behalf of the Purchaser: doc. RNDr. Miroslav Lávička, Ph.D.,
Dean of the Faculty of Applied Sciences,
authorized to act on behalf of the University
Bank: Komerční banka a.s., Plzeň-město
Account no.: 4811530257/0100
On one part as the Purchaser (hereinafter referred to as "the Purchaser")

and

Wind River GmbH

Registered office: Steinheilstrasse 10, 85737 Ismaning, Germany
ID No.: HRB 97784
Tax ID No.: DE129495021
Represented by: Manfred Sperling
Registered in: Handelsregistr B. München
Bank: Citibank Frankfurt
Account no.: 216397002
IBAN: DE36502109000216397002
SWIFT: CITIDEFF

On the other part as the Seller (hereinafter referred to as “the Seller”)

Entered into this Purchase Contract (hereinafter referred to as the “Contract”) on the hereinbelow day, month and year:

I. Introduction

1. This Purchase Contract is entered into based on the result of the below-the-threshold Public Tender entitled “**Delivery of Real-Time Operating System for the NTIS Project**” (hereinafter referred to as “the Public Contract”). The Purchaser, as the Contracting Authority, selected the offer submitted by the Seller as the best bid.
2. The Seller confirms that they have become fully acquainted with the scope and nature of the thing that is subject of the purchase and relates to the subject matter of the Public Contract, and that they are aware of all technical, qualitative and other conditions and have the capacities and expertise needed to deliver the Contract.
3. The Seller explicitly confirms that they have studied all the Purchaser’s documents and instructions received by the date of execution of this Contract as well as instructions contained in the requirements that the Purchaser defined for the Public Contract, that the Seller has found these requirements to be appropriate, that the purchase price and the method of the Contract delivery contain and take into consideration all the above specified conditions and circumstances.

II. Object of Sale

1. Pursuant to the terms and conditions of this Contract, the Seller undertakes to supply to the Purchaser the **real-time operating system (hard real-time) for the most demanding control systems and embedded devices applications** (hereinafter also referred to as “the Product” or “the Software”).
2. The object of sale including the requested number of licenses is specified in Annex no. 1 to this Contract: Equipment Technical Parameters and Related Obligations of the Seller. The object of sale is a set of data media (DVD) and hard-copy documents or electronic documents on a DVD medium.
3. The object of sale must be delivered in the agreed quantity, quality and design to the agreed place in the agreed time. The Seller expressly declares that the Product complies with the technical parameters and supports the functions specified in the Annex no. 1 to this Contract. The Seller undertakes to comply with other related obligations under this Contract.
4. Supply of all and any documents necessary for the use of the Software and of complete detailed technical documents, i.e. User Manual, Programmer's Manual and Detailed Reference Manual (in Czech or English, in hard or electronic copy) will be integral part of this Contract delivery.

5. The Purchaser undertakes to accept the delivered object of sale and to pay to the Seller the price stipulated in this Contract under the conditions specified herein.

III. Price and Payment Conditions

1. The purchase price results from the price bid submitted by the Seller calculated for the purposes of the Public Tender.
2. The purchase price will be paid by the Purchaser to the Seller after the object of sale is delivered and accepted, and the Acceptance Protocol is signed by authorized representatives of the two Contracting Parties.
3. The total purchase price for the entire object of sale is EUR 45.364 in words: forty five thousand three hundred sixty four euro excluding VAT (hereinafter referred to as "the Purchase Price").
4. In accordance with the Value Added Tax Act no. 235/2004, Coll., as amended, the Purchase Price is determined excluding VAT; the VAT may be added to the Purchase Price, that the Seller will be obliged to pay, or declare or return in any form pursuant to the VAT Act no. 235/2004, Coll., applicable on the date of taxable supply.
5. The Purchase Price will be determined as the highest acceptable, maximum price that cannot be exceeded, it will include all fees and all additional costs incurred in connection with the delivery of the object of sale. The Seller is not entitled to charge any other amounts for the performance of the herein Contract.
6. The purchase price for the object of sale will be paid by the Purchaser based on a tax document (hereinafter also referred to as "the invoice") issued by the Seller within 15 days of the delivery and acceptance of the object of sale and duly signed Acceptance Protocol. A copy of the Acceptance Protocol will form an integral part of the invoice.
7. The invoice will be due 30 days from the date when it is demonstrably received by the Purchaser. However, the Purchaser reserves the right to unilaterally extend the due date of the tax document according to its ability to use funds provided by the Research and Development for Innovation Operational Programme (hereinafter referred to as "the OP RDI") by up to 30 calendar days. The late allocation of the OP RDI funds does not establish the Purchaser's delay with the payment of the purchase price.
8. The invoice must contain all elements of a proper accounting and tax document pursuant to the relevant legislation, namely – yet not exclusively – of the Value Added Tax Act no. 235/2004, Coll., as amended. The Purchaser will be entitled to return an invoice missing the relevant elements to the Seller to be amended before its due date, and the Purchaser will not be in delay with the payment in such a case. The payment period will start again after the duly amended or corrected invoice is sent to the Purchaser.

IV. Place of Delivery and Acceptance of the Object of Sale

1. The Seller undertakes to deliver the object of sale to the place of delivery, i.e. University of West Bohemia in Pilsen, Bory – New NTIS Building (no. 2967), Czech Republic; the Seller will deliver the data media as specified in the subject of the Contract to the address of the Purchaser. At the same time, the Seller will provide installation (access) codes to the Purchaser.

2. The Acceptance Protocol will be made out to certify the delivery and acceptance of the object of sale, the Protocol will be signed by authorized representatives of both Contracting Parties.
3. The Purchaser will not be obliged to accept any object of Sale demonstrating any defect or shortcoming.

V. Term of Delivery

1. The Seller undertakes to start delivering the object of sale on the effective date of the Contract and duly complete the delivery of the object of sale within 15 (fifteen) calendar days after the effective date of the Contract at the latest, however, not later than 31st December 2014. The Purchaser will not accept the object of sale after 31st December 2014.

VI. Transfer of Ownership Right and License Agreement

1. The Seller shall transfer the ownership right to the tangible parts of the Product (media, documents) to the Purchaser and shall authorize the Purchaser to exercise the right to use the Software as of the date of proper delivery and acceptance of the object of sale by the Purchaser based on a duly signed Acceptance Protocol signed by representatives of both contracting parties.
2. The Seller shall provide the Purchaser with the right to use the delivered software, i.e. with the Software license in accordance with the License Agreement specified by the Seller and enclosed to this Contract as Annex no. 2 forming an integral part of this Contract. The Purchaser undertakes to countersign this License Agreement with the Seller by the Purchaser's signature. Should there be any discrepancies between the License Agreement and this Contract, the Contract provisions shall take precedence and the License Agreement (Annex no. 2 to the Contract) shall be considered legally ineffective in the relevant scope. Compensation for the license is included in the purchase price specified in article III herein.
3. The Seller guarantees that the object of Sale is not subject to any third party rights that would prevent signing of this Contract and the proper use of the object of Sale by the Purchaser, in particular industrial property rights.

VII. Termination of the Contract

1. This Contract can be terminated:
 - a) By a written agreement of the Contracting Parties;
 - b) By withdrawal from the Contract for reasons stipulated in the Contract or specified by the law.
2. A Contracting Party may terminate this Contract for a gross violation of the Contract by the other Party. In particular, the following will be considered a gross violation of this Contract:

- a) The Purchaser's failure to pay the Purchase Price in accordance with this Contract within 60 days after the due date of a relevant invoice;
 - b) The Seller's failure to duly deliver the object of sale (or its part) on the agreed date entitling the Seller to the payment of the purchase price (or its part) based on a relevant invoice;
 - c) The Seller's failure to supply object of sale possessing the properties declared by the Seller in this Contract or properties arising from this Contract;
 - d) The Seller's failure to provide correct information or documents indicative of the actual situation in the Bid submitted to the Public Tender, which have or could have affected the result of the Tender.
3. Should one of the Parties fail to comply with other contractual conditions (such as proper performance of guarantee repairs in particular), the other Party will be entitled to terminate the Contract, if the defaulting Party fails to meet its obligations during extended reasonable period granted to the Party for the purpose.
 4. A Party must withdraw from the Contract in writing without undue delay after learning of the violation.
 5. Should a Party withdraw from the Contract, the Contracting Parties will be obliged to settle their obligations and receivables as specified by the law or in the Contract within 30 days of the effective date of the withdrawal, or by a stipulated date.

VIII. Penal Obligations

1. Should the Seller fail to meet its Contractual obligation, in particular, should the Seller be in default with the delivery of the object of sale, i.e. should the Seller fail to deliver the object of sale by the stipulated date, the Seller will be obliged to pay to the Purchaser a contractual penalty of 0.05% of the total Purchase Price for every started day of such delay up to the total amount of 5% of the total Purchase Price.
2. Should the Purchaser be in default with the payment of the invoice, the Seller will be entitled to charge the Purchaser with the contractual interest on late payment of 0.05% of the amount due for every started day of the payment delay up to 5% of the total invoiced amount.
3. The obliged Party must settle the contractual sanction (contractual penalty) to the entitled Party within 15 calendar days of receipt of the relevant calculation submitted by the other Contracting Party at the latest.
4. The Purchaser will be entitled to offset any contractual penalty due from the Seller against invoiced amounts.

IX. Other Provisions

1. The Seller acknowledges that, pursuant to the Financial Control in Public Administration Act no. 320/2001, Coll., section 2 (e), as amended, the Seller is a person obliged to cooperate in exercising financial control. A controlling body of the Operational Programme RDI will be authorized to perform an audit and access those parts of the bid,

Contract and relating documents that are subject to protection according to special legal regulations (such as trade secrets, proprietary information) for a period of three years after the operational programme is closed, provided that the requirements defined by the law (for example, the State Control Act no. 552/1991, Coll., Section 11 (c) and (d) and Section 12, subsection 2 (f), as amended) are met. The controlling body of the Operational Programme RDI is similarly authorized to perform an audit at the Seller's subcontractors (see Annex no. 2 to the Guidelines for OP RDI Applicants and Beneficiaries: <http://www.msmt.cz/strukturalni-fondy/spolecne-prilohy-pripravek-pro-zadatele-a-prijemce-op-vavpi-3>).

2. The Seller will be obliged to properly maintain all documents relating to the execution of the object of sale (including accounting books) for at least three years after the OP RDI project is closed, i.e. at least until 2021. During the same time period, the Seller will be obliged to provide requested information and documents to the agents of bodies authorized to audit projects performed under OP RDI and will be obliged to create conditions for these personnel to be able to carry out the audit of the project implementation and cooperate in the audit.

X. Communication

1. All communication or other acts of the Contracting Parties pursuant to this Contract will be addressed to the hereinbelow representatives of the Contracting Parties in Czech or English language.
2. Should this Contract require a written statement by the Parties to communicate or act, the notice will be sent via provider of postal services to the address of the relevant Contracting Party to the attention of the herein specified representative of the Contracting Party.
3. Should this Contract require a certain statement or act of the Contracting Parties to be made in writing by a certain deadline, such deadline will be met, if the statement or act will be delivered electronically to the e-mail of the representative of the other Contracting Party in accordance with the Contract, if the statement or information about the act is sent consequently via provider of postal services to the address of the relevant Contracting Party within three business days.
4. Representatives of the Parties

The Seller declares that the following person was authorized to act in his/her name in the matters relating to the performance of this Contract:

Name:	Manfred Sperling
E-mail:	Manfred.Sperling@windriver.com
Phone:	+49 89 96 24 45 0

The Purchaser declares that the following person was authorized to act in his/her name in the matters relating to the performance of this Contract:

Name:	Ing. Pavel Balda, Ph.D.
E-mail:	pbalda@ntis.zcu.cz
Phone:	+420 377 632 532.

5. These representatives, however, have no authority to sign any amendments to the Contract.

XI. Closing Provisions

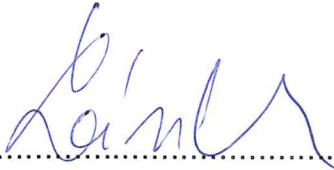
1. This Contract is governed by the Czech law. Matters not expressly stipulated in the Contract are governed by the relevant provisions of the Civil Code, Act no. 89/2012, Coll., as amended. Any disputes arising from this Contract or relating to this Contract will be resolved by a Czech court of the relevant jurisdiction in the place of registered address of the Purchaser.
2. This Contract is made out in four identical copies, each of which is valid as original. Each of the Contracting Parties will receive two identical copies.
3. This Contract may only be altered or amended by written amendments numbered in ascending uninterrupted order and signed by both Contracting Parties.
4. This Contract becomes valid and effective on the date it is entered into, i.e. on the date it is signed by authorized representatives of both Contracting Parties.
5. Should any of the Parties be unable to duly perform the Contract due to a reason on its part, the Party will be obliged to inform the other Party about the fact without undue delay and initiate a discussion between representatives of the Purchaser and the Seller.
6. Annexes to the Contract form its integral part:
 - Annex no. 1: Equipment Technical Parameters and related obligations of the Seller.
 - Annex no. 2: License Agreement specified by the Seller
 - Annex no. 3: Authorization of the Dean of the Faculty of Applied Sciences of University of West Bohemia in Pilsen to Act on Behalf of University of West Bohemia in Pilsen.
7. The Contracting Parties declare that they have carefully read the Contract before signing, and agree with its content; in witness thereof both Contracting Parties attach their signatures.

In Munich date 18.12.2014



On behalf of the Seller
Manfred Sperling
Senior Director, Finance
Managing Director, Wind River GmbH

In Pilsen, date 15.12.2014



On behalf of the Purchaser
doc. RNDr. Miroslav Lávička, Ph.D.,
Dean of the Faculty of Applied Sciences
authorized to act on behalf of the University

Annex no. 1 to the Purchase Contract

Product's Technical Specifications and Related Seller's Duties

Software comprises the following:

One (1) full RTOS (real-time operating system) collective licence applying to all components, including development tools (graphical environment, compiler, debugger, application and driver development kit) and configuration tools for GNU/Linux or Windows or an equivalent operating system;

One (1) run-time licence and BSP (Board Support Package) for Altera Cyclone V SoC (System on Chip) target platform.

Operating system's features:

- Independent parallel operation of multiple applications, processes or systems;
- Fully configurable time characteristics, priorities, and allocated systems tools;
- Support for Altera Cyclone V SoC (System on Chip) target platform;
- SMP (Symmetrical Multiprocessing) and MMU (Memory Management Unit) support;
- Real-time system properties, i.e. determinism and guaranteed maximum latency time;
- Support for periodical process launching with the frequency of at least 50kHz and guaranteed latency time;
- Support for Ethernet network communication and IPv4, IPv6, UDP and TCP/IP network protocols;
- Support for POSIX PSE 51/52 standard as per IEEE Std. 1003.13;
- Ability to certify applications being developed according to IEC 61508 safety standard;
- Full-fledged development environment able to run on an ordinary operating system (such as Windows, GNU/Linux or equivalent);
- Configuration tools able to run on an ordinary operating system (such as Windows, GNU/Linux or equivalent).

Technical support for the Software is stipulated in the License Agreement specified by the Seller, representing Annex no. 2 to this Contract; support activities shall be provided for at least 24 months after the proper delivery and acceptance of the Software.

WIND RIVER**SOFTWARE DEVELOPMENT & DISTRIBUTION LICENSE AGREEMENT**

THIS SOFTWARE DEVELOPMENT & DISTRIBUTION LICENSE AGREEMENT ("**Agreement**") is entered into as of the date fully executed (the "**Effective Date**"), between **WIND RIVER SYSTEMS, INC. ("Wind River")**, located at 500 Wind River Way, Alameda, California 94501, USA, and **UNIVERSITY OF WEST BOHEMIA**, located at Univerzitní 8, 306 14 Plzeň, Czech Republic, ("**Customer**").

The parties agree as follows:

1. **DEFINITIONS.**
- 1.1 "**Affiliate**" means any person or entity that: (a) directly or indirectly Controls, is Controlled by, or is under common Control with Customer; and (b) has been granted a license pursuant to an Exhibit A; provided, however, that such person or entity will be deemed an Affiliate only for as long as such Control exists..
- 1.2 "**Approved Host**" means the host computer on which Customer is authorized to use the Software pursuant to this Agreement, as specified in an Exhibit or Quote.
- 1.3 "**Authorized Developer(s)**" means any person or entity who may access and use the Software pursuant to Section 3.5 (Authorized Developers).
- 1.4 "**Authorized Manufacturer(s)**" means any person or entity who may use the Software pursuant to Section 3.6 (Authorized Manufacturers).
- 1.5 "**Confidential Information**" means: (a) the Software Source Code; (b) the technology, ideas, know how, documentation, processes, algorithms and trade secrets embodied in the Software; (c) all software keys related to the Software; and (d) any other information, whether disclosed orally, in writing or on magnetic media, that is (i) identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure, and, if disclosed orally, is confirmed in writing as confidential within thirty (30) days of the date of initial disclosure or (ii) should reasonably be understood to be confidential based on the nature and circumstances of the disclosure. Confidential Information does not include any information that Customer reasonably demonstrates is: (i) published or otherwise available to the public other than by breach of this Agreement by Customer; (ii) rightfully received by Customer from a third party without confidential limitations; (iii) independently developed by Customer as evidenced by appropriate records; (iv) known to Customer prior to its first receipt from Wind River as evidenced by appropriate records; (v) hereinafter disclosed by Wind River to a third party without restriction on disclosure; or (vi) approved for public release by written authorization of Wind River.
- 1.6 "**Control**" means (i) ownership of more than fifty percent (50%) of the outstanding stock or securities entitled to vote for the election of directors or similar managing authority of the subject entity; (ii) ownership of more than fifty percent (50%) of the ownership interest that represents the right to make decisions for the subject entity; (iii) any other ability to elect more than half of the board of directors or similar managing authority of the subject entity, whether by contract or otherwise; or, (iv) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the subject entity whether through the ownership of voting securities, through other voting rights, by contract or otherwise..
- 1.7 "**Development License**" means the right of a User to use certain Software pursuant to Section 2.1 of this Agreement. The Development License type and quantity will be specified in an Exhibit A or Quote.
- 1.8 "**Development Location**" means the geographic address of each Customer site or facility where the Software is authorized to be installed and used in accordance with the terms of this Agreement. Customer's initial Development Location(s) will be specified in an Exhibit A or Quote and, subject to the restrictions set forth in the applicable Development License.
- 1.9 "**End User**" means any entity to which Customer provides a Target Application for further distribution or such entity's own use, pursuant to an End User License Agreement.

- 1.10 **"End User License Agreement"** or **"EULA"** means a written license agreement in a commercially reasonable form containing the restrictions specified in Section 3.4, pursuant to which Customer may sublicense to End Users the Run-Time Module that is incorporated into a Target Application.
- 1.11 **"Exhibit"** means an attachment to this Agreement that the parties may simultaneously or separately execute from time to time in order to license software under this Agreement.
- 1.12 **"Floating User"** means any User who may access and use the Software pursuant to Section 2.1.1 (Floating User Development License).
- 1.13 **"GNU Licenses"** mean 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.
- 1.14 **"Modifications"** mean, without limitation: (a) all adaptations, modifications, improvements, enhancements, revisions or interface elements created from the Software, and (b) any "derivative" work of the Software as defined in U.S. Copyright Law, 17 U.S.C. §101 et seq.
- 1.15 **"Named User"** means any individual User who uses the Software pursuant to Section 2.1.2 (Named User Development License).
- 1.16 **"Node-Lock User"** means any individual User who uses the Software pursuant to Section 2.1.3 (Node-Lock User Development License).
- 1.17 **"Object Code"** means computer-programming code in a form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.
- 1.18 **"Operating System"** means the Software Source Code and/or Software Object Code that is part of Wind River's operating system product families or other operating systems Software that may be provided by Wind River under this Agreement.
- 1.19 **"Production License"** means the right to use the Software pursuant to Section 2.2, as further specified in an Exhibit or Quote.
- 1.20 **"Project"** means a concerted undertaking by an identified Customer development team to design or produce a Target Application that utilizes the Approved Target Processor and has a specified scope of functionality, as set forth in an Exhibit or Quote.
- 1.21 **"Quote"** means the Wind River final sales quote detailing Wind River's offer to license the Software identified in such Quote to Customer as well as other business restrictions related to Customer's use of the Software or support and maintenance entitlement.
- 1.22 **"Run-Time Module"** means components of the Operating System and Software Source Code, solely in Object Code form, to be incorporated into a Target Application as inseparably embedded code.
- 1.23 **"Software"** means (a) the computer programming code and accompanying documentation, including patches, any updates or upgrades, provided by Wind River under this Agreement, and (b) all Modifications thereto made by Wind River and delivered to Customer or made by or on behalf of Customer in accordance with this Agreement. "Software" includes without limitation the Operating System, Tools, Source Code or any combination of these, and excludes any computer programming code to the extent such code is subject to any of the GNU Licenses.
- 1.24 **"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.
- 1.25 **"Supported Architecture Family"** means the target architecture family or families then-supported by Wind River on which Customer may use the Software pursuant to this Agreement, as specified in an Exhibit A or Quote.

- 1.26 **"Supported Target Processor"** means the microprocessor(s) on which Customer is authorized to use the Software pursuant to this Agreement, as specified in an Exhibit A or Quote.
- 1.27 **"Target Application"** means an item, device or system developed by Customer pursuant to a Project that does not contain any Software development functionality and that contains a Run-Time Module or any portion thereof.
- 1.28 **"Third Party Software"** shall have the meaning set forth in Section 3.3 (Third Party Software).
- 1.29 **"Tools"** means the Source and/or Object Code provided by Wind River under this Agreement that is intended for Customer's internal use in developing applications in accordance with the Development License and not for incorporation into Target Applications or for distribution.
- 1.30 **"User"** means a Customer employee, Authorized Developer or independent contractor who (a) is based at a Development Location, (b) will utilize the Software on behalf of Customer, and (c) who has signed a confidentiality agreement with Customer in which such employee or independent contractor agrees to protect third party confidential information with terms no less stringent than those set forth herein. Each User will be either a Floating User, Named User or Node-Lock User, as such terms are further defined in Section 2.1 (Development License). For the avoidance of doubt, a User will be deemed to have utilized the Software if such User has accessed or used any portion of the Software, including without limitation, to accomplish the goal of, or which results in, any of the following: (a) developing Customer applications, API code, or Target Application, as further specified in Section 2.1; (b) using Tools to compile any code; (c) porting or linking (whether statically or dynamically) any code to an Operating System; or (d) other similar engineering activity or result.

2. LICENSE GRANT.

- 2.1 **Development License.** Subject to Customer's compliance with the terms and conditions of this Agreement and any Exhibit, and payment of the applicable fees, Wind River grants to Customer, a perpetual, restricted, personal, non-transferable, non-exclusive, internal-use license:

- 2.1.1 for **Floating User Development Licenses**, (a) to reproduce and use one (1) copy of the Software per Development License on the Supported Architecture Family or Supported Target Processor per Project, solely for the number of licensed concurrent Floating Users located at each Development Location and specified as licensed for such Software in such Exhibit A or Quote;

OR

- 2.1.2 for **Named User Development Licenses**, (a) to reproduce and use one (1) copy of the Software per Development License on the Supported Architecture Family or Supported Target Processor per Project, solely for the licensed Named Users located at each Development Location and specified as licensed for such Software in such Exhibit A or Quote. The Customer will use license management technology in the Software to assign each Development License to a Named User and no other User may use the copy of the Software designated for that Development License without the prior written consent of Wind River; except, however, that Customer may (a) transfer a Named User Development License from one Named User to another individual if the Named User has left Customer's business, and is replaced by another Named User, or (b) make legal name changes or network UserID changes to the Named User profile information, subject to notification to Wind River submitted to Wind River's email alias (CustomerReports@windriver.com).

OR

- 2.1.3 for **Node-Lock User Development Licenses**, (a) to reproduce, access and use one (1) copy of the Software per Development License on the Supported Architecture Family or Supported Target Processor per Project, solely on the number of "Node-locked hosts" licensed and located at each Development Location and specified as licensed for such Software in such Exhibit A or Quote. For purposes of this Agreement, the "Node" means the host computer where both the Software and license management file are physically installed;

AND

(b) to reproduce up to ten (10) copies of the Run-Time Module for each Development License, solely in Object Code, for internal testing and development purposes by Customer; (c) to reproduce the Software for archive purposes, consistent with Customer's standard archive procedures; (d) if Customer has licensed Software Source Code, to modify the Software Source Code, solely to the extent necessary to support the development of a Target Application and to properly interface with the Run-Time Module; and to compile the Software Source Code, including any Modifications thereof, into Object Code.

2.2 **Production License.** Subject to Customer's compliance with the terms and conditions of this Agreement and any Exhibit, and payment of the applicable fees, Wind River grants Customer, a perpetual, restricted, non-exclusive and non-transferable, fee bearing license: (a) to reproduce the number of copies of the Run-Time Modules authorized in such Exhibit A or Quote, solely in Object Code; and (b) to distribute such copies of the Run-Time Modules to End Users worldwide solely as inseparably embedded content in the Target Application, subject to an End User License Agreement. Customer will attach a unique identifier, such as a character in the part number, to all products or parts containing Run-Time Module copies, to enable Customer to readily identify each Run-Time Module copy embedded in each Target Application ("Unique Identifier").

2.3 **Evaluation License.** If Software is designated by Wind River for Customer's limited evaluation purposes ("Evaluation Software"), then the following license terms and conditions shall solely apply to Customer's use of such Evaluation Software, and shall supersede any conflicting provisions of this Agreement for purposes of such Evaluation Software:

2.3.1 Subject to Customer's compliance with the terms and conditions of the Agreement, Wind River hereby grants to Customer a restricted, personal, non-transferable, non-exclusive, internal-use license, solely during the Evaluation License Term set forth in Exhibit A, to: (i) use the Evaluation Software solely at the Development Location and solely for the purpose of internally evaluating the Evaluation Software and not for any other purpose (including without limitation, commercial or production purposes); (ii) modify the Software Source Code solely to the extent necessary to evaluate the use of the Evaluation Software in the possible development of Customer's products; and (iii) reproduce the Evaluation Software for archive purposes, consistent with Customer's standard archive procedures. Customer will reproduce and include any and all copyright notices and proprietary rights legends, as such notices and legends appear in the original Evaluation Software, on any copy of the Evaluation Software, or any portion thereof, and in any Modifications.

2.3.2 Customer may disclose any results of any evaluation of the Evaluation Software including, without limitation, Customer's opinions, observations, comments, criticisms and suggested improvements, whether in written or oral form (herein, "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.

2.3.3 CUSTOMER ACKNOWLEDGES THAT WIND RIVER HAS NO OBLIGATION TO PROVIDE SUPPORT OR MAINTENANCE FOR THE EVALUATION SOFTWARE. THIS EVALUATION SOFTWARE IS PROVIDED "AS IS" WITH NO WARRANTIES OR INDEMNITIES 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. IN NO EVENT WILL WIND RIVER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS OR TO THE EVALUATION SOFTWARE EXCEED \$50.00.

3. **CONDITIONS.**

3.1 **General.** Except as expressly permitted by this Agreement, Customer will not, nor permit any third party to: (a) for Floating User Development Licenses: (i) permit access to or use of the Software in excess of the quantity of concurrent Floating Users set forth in the applicable Exhibit A or Quote; (ii) transfer any Floating User Development License from one Development Location to another, or (iii) allow one Floating User at one Development Location to access the Software from a licensed server at another Development Location; (b) for Named User Development License, permit concurrent access to or use of a single copy of the Software for any Named User Development License, or access or use by anyone other than the Named

User assigned to the Development License, as set forth in the applicable Exhibit A or Quote; (c) for Node-Lock User Development Licenses, install the Software on more than the quantity of licensed Nodes set forth in the applicable Exhibit A or Quote; (d) 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 Object Code provided to Customer; (e) reproduce the Operating System, Tools, or Source Code other than as specified in the applicable License Grant set forth in Section 2; (f) sublicense, rent, lease, loan, timeshare, sell, distribute, disclose, publish, assign or transfer any rights, grant a security interest in, transfer possession of the Software or electronically transfer the Software from one computer to another except over Customer's internal network pursuant to Section 3.2; (g) modify, distribute or otherwise use the Software in any manner that causes any portion of the Software that is not already subject to an open source license to become subject to the terms of any open source license; (h) list or quote a Run-Time Module as a separately priced item or option; (i) configure a Run-Time Module so that it will operate apart from the Target Application; or (j) alter or remove any of Wind River's or its licensors' copyright or proprietary rights notices or legends appearing on or in the Software. Customer will reproduce such notices on any copies of the Software Customer is permitted to make. Customer's use of the Software or support and maintenance entitlement may be subject to additional requirements or restrictions as expressly stated in an Exhibit A or Quote. Customer will inform all Users of the restrictions set forth in this Agreement with respect to use of the Software.

- 3.2 **Network Access.** Floating and Named Users who have a unique network log-in (e.g., NT or Unix log-in) may access the Software from a secure network server located at the Development Location over a secure VPN or equivalent secure network. Within thirty (30) days following Wind River's written request, Customer will disclose to Wind River the Development Location of each network from which Software will be accessed. Node-Lock Users will not remotely access the licensed node, where "remote" access means any access to the Node other than being physically present at the host computer.
- 3.3 **Third Party Software.** Elements of the Software may contain or be derived from materials of third party licensors, which may include, but are not limited to, software licensed under the Apache Software License, BSD License or any other similar license ("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 the third party notice file that accompanies the Software. Customer acknowledges and agrees that its use of Third Party Software is subject to its compliance with any such additional terms.
- 3.4 **End User License Agreement.** Customer will take all steps necessary to protect Wind River's and its licensors' proprietary rights in the Run-Time Module and to ensure that each distributed Run-Time Module will be accompanied by a localized copy of an End User License Agreement. Such EULA will prohibit the End User from: (a) copying the Run-Time Module, except for archive purposes consistent with the End User's archive procedures; (b) transferring the Run-Time Module to a third party apart from the Target Application; (c) modifying, decompiling, disassembling, reverse engineering or otherwise attempting to derive the Source Code of the Run-Time Module; (d) exporting the Run-Time Module or underlying technology in contravention of applicable U.S. and foreign export laws and regulations; and (e) using the Run-Time Module other than in connection with operation of the Target Application. In addition, the EULA will: (i) state that the Run-Time Module is licensed, not sold, and that Customer and its licensors retain ownership of all copies of the Run-Time Module; (ii) expressly disclaim, on behalf of Wind River, all implied warranties, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement; (iii) exclude liability of Wind River for any special, indirect, punitive, incidental and consequential damages; (iv) require that any further distribution of the Run-Time Module be subject to the same restrictions set forth herein; and (v) provide that with respect to the Run-Time Module, Wind River and its licensors are third party beneficiaries of the EULA and that the provisions related to the Run-Time Module are made expressly for the benefit of, and are enforceable by, Wind River and its licensors.
- 3.5 **Authorized Developers.** Subject to Customer's compliance with the terms and conditions of this Agreement and applicable Exhibit A, Wind River grants Customer the right to authorize a subcontractor ("Authorized Developer") to use the Software for the Customer for the sole purpose of exercising the Development License set forth in Section 2.1 (the "Development Purpose"). The name and address of the Authorized Developer will be specified in an Exhibit A or Quote. The Authorized Developer will acquire no rights in the Software other than those expressly provided in this Section 3.5. Customer and Authorized

Developer will have a written agreement governing Authorized Developer's use of the Software, on terms at least as protective of the Software as the terms of this Agreement, including without limitation, that the Authorized Developer shall: (a) use the Software solely for the Development Purpose; (b) treat the Software as Confidential Information pursuant to the terms of Section 5; and (c) irrevocably and in perpetuity, assign any and all rights in and to the Software and Modifications to Wind River; and (d) be subject to an audit provision similar to Section 9.4 (Customer Compliance). Any breach by Authorized Developer of its obligations under such agreement with respect to the Software will also constitute a breach by Customer of this Agreement. Wind River will be specified as a third party beneficiary of such agreement between Authorized Developer and Customer.

3.6 **Authorized Manufacturers.** Subject to Customer's compliance with the terms and conditions of this Agreement and applicable Exhibit A, Wind River grants Customer the right to authorize a subcontractor ("Authorized Manufacturer") to reproduce without any changes the Software in Object Code form to manufacture the Target Application for Customer, as such Software was provided to such subcontractor (including without limitation, the Run-Time Module and the Unique Identifier) (the "Production Purpose"). The name and address of the Authorized Manufacturer will be specified in an Exhibit A or Quote. Authorized Manufacturer will acquire no rights in the Software other than those expressly provided in this Section 3.6. Customer and Authorized Manufacturer will have a written agreement governing Authorized Manufacturer's use of the Software, on terms at least as protective of the Software as the terms of this Agreement, including without limitation, that the Authorized Manufacturer shall: (a) use the Software solely for the Production Purpose; (b) treat the Software as Confidential Information pursuant to the terms of Section 5; (c) irrevocably and in perpetuity, assign any and all rights in and to the Software and Modifications to Wind River; and, (d) be subject to an audit provision similar to Section 9.4 (Customer Compliance). Any breach by Authorized Manufacturer of its obligations under such agreement will also constitute a breach by Customer of this Agreement. Wind River will be specified as a third party beneficiary of such agreement between Authorized Manufacturer and Customer.

3.7 **Affiliates Use.** Subject to the terms and conditions of this Agreement, Customer's Affiliates may use the Software pursuant to Section 2 of this Agreement, provided that all of the following conditions are satisfied: (a) the name and address of the Affiliate is specified in an Exhibit A or Quote; (b) Customer expressly agrees that it will notify its Affiliates in writing of the terms and conditions of this Agreement and that such Affiliates will be liable to Wind River for breach of any of the terms and conditions of the Agreement; and (c) Customer expressly agrees that any breach of the terms and conditions of this Agreement by any of Customer's Affiliates, will also constitute a breach by Customer of this Agreement.

4. **OWNERSHIP.** Customer is not obligated to disclose to Wind River any Modifications. Nevertheless, Wind River and its licensors will exclusively own all worldwide rights, title and interest, in and to the Software, and all Intellectual Property Rights therein, and Customer hereby assigns to Wind River all such Intellectual Property Rights it may have or obtain in and to the Software. All rights not expressly granted to Customer in this Agreement are expressly reserved for Wind River and its licensors. "**Intellectual Property Rights**" means all copyrights, trade secrets, trademarks, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide.

5. **CONFIDENTIAL INFORMATION; ACCESS TO SOURCE CODE.**

5.1 **Access to Source Code.** Customer will use its best efforts to protect the Software Source Code from unauthorized access, reproduction, disclosure or use; and only authorized Users of the Software Source Code who have signed a written agreement with Customer, in which the User agrees to protect third party confidential information with terms no less stringent than those set forth herein may have access to the Software Source Code for use in accordance with the applicable Agreement terms. A breach by any User of its obligations under such confidentiality agreements will also constitute a breach by Customer hereunder. Customer will maintain accurate written records of the names of all employees and independent contractors who have had access to the Software Source Code. Customer will notify Wind River immediately if Customer becomes aware of any unauthorized use or disclosure of the Software Source Code, and will give full cooperation, at its own expense, to minimize the effects of such unauthorized use or disclosure. UPON THE UNAUTHORIZED TRANSFER OF ANY COPY OF THE SOFTWARE IN SOURCE CODE TO ANOTHER PARTY, WIND RIVER MAY TERMINATE THIS AGREEMENT IMMEDIATELY UPON NOTICE AS THIS BREACH SHALL NOT BE CURABLE. .

- 5.2 **Confidential Information.** Customer will not use or disclose any Confidential Information, except as expressly authorized by this Agreement, and will protect all such Confidential Information using the same degree of care that Customer 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 Customer, Customer will: (a) assert the confidential nature of the information in the action or proceeding; (b) promptly notify Wind River of the order or request; and (c) permit Wind River (at its own expense) to seek an appropriate protective order.
6. **TERM AND TERMINATION.**
- 6.1 The term of this Agreement will commence upon the Effective Date and continue until terminated as set forth herein. Either party may terminate this Agreement immediately upon notice for the material breach of the other party, which breach is curable and has remained uncured for a period of thirty (30) days from the date of notice.
- 6.2 Upon termination of this Agreement or the applicable Evaluation License exhibit, Customer will: (a) not use the Software for any purpose whatsoever; (b) immediately destroy or return to Wind River all material belonging to Wind River or its licensors, including without limitation all Software, Run-Time Modules and Wind River Confidential Information then in Customer's possession; (c) cease the reproduction and distribution of Run-Time Modules (except as provided below); and (d) promptly certify to Wind River in writing that Customer has completed the actions described in the foregoing subsections (a) through (c). Subject to Customer's compliance with this Agreement, Customer may retain one (1) copy of each Run-Time Module to support existing End Users provided that Customer is then current with payments due to Wind River. If Customer terminates this Agreement for Wind River's material breach, Customer will have the right to distribute, for sixty (60) days from the date of termination or expiration, any Target Applications that were in Customer's inventory as of the effective date of the termination, provided that such distributions are otherwise in compliance with the terms of this Agreement. These remedies will be cumulative and in addition to any other remedies available to Wind River. All Sections except Sections 2, 3.2, 3.5, 3.6 and 7 will survive expiration or termination of this Agreement.
7. **KEYS AND ACCESS.** Wind River will provide Customer those Software keys that are reasonably necessary to permit Customer to gain access to the licensed Software shipped to Customer. Customer will disclose such Software keys solely to authorized Users of the Software. The Software also contains license management technology intended to cause the Software to cease operating upon expiration or termination of the license. Customer will not circumvent the license management technology, or any other security devices, access logs, or other protective measures provided with the Software or permit or assist any User or any third party to do the same. The license management technology and any other protective measures contained in the Software are included solely as a matter of administrative convenience, and Customer has no right or license in or to such protective measures. Customer will be invoiced for any additional Users who access the Software and will pay any such invoice in accordance with Section 9. Customer will follow the recommended installation procedures for each Software product licensed under this Agreement.
8. **PURCHASE ORDERS.** Upon execution of an Exhibit A, renewal of the support, or purchase of additional licenses or services under this Agreement, Customer will submit to Wind River a purchase order in the amount specified in the corresponding Exhibit A or Quote. Any other terms and conditions on the purchase order will be of no force or effect. Wind River may reject any purchase order that Wind River determines to be outside the scope of this Agreement.
9. **DELIVERY, PAYMENT, TAXES AND RECORDS.**
- 9.1 **Delivery and Payment Terms.**
- 9.1.1 The Software will be deemed irrevocably accepted upon shipment. When Software is made available to Customer for electronic download through access to a website and/or server, shipment will be deemed to have occurred at the time of such availability.
- 9.1.2. Customer will pay to Wind River the fees set forth in the applicable Exhibit A or Quote. Wind River will invoice Customer the applicable fees upon confirmation and acceptance of Customer's purchase order, which may coincide with shipment of the Software or upon Customer's addition of Users. Payment terms herein are subject to prior credit approval by Wind River. Customer will pay

all invoices within thirty (30) days of the date of such invoice or, for production fees not pre-paid to Wind River, within thirty (30) days following the end of each quarter (accompanied by the quarterly License Report pursuant to Section 9.3), in U.S. dollars unless otherwise set forth in the applicable Exhibit A. Interest on late payments will accrue at the rate of one and one-half percent (1.5%) per month, or, if lower, the highest rate permitted by law. Failure to pay any invoice in the manner described in this Section may, at Wind River's discretion, be deemed a material breach of this Agreement.

- 9.1.3 If ordering Software through an authorized Wind River distributor, Customer will be invoiced directly by such distributor (and not Wind River), and Customer will pay the distributor the applicable fees in accordance with the payment terms agreed to between Customer and the distributor.

- 9.2 **Taxes.** All amounts due hereunder will 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 will pay the full license or other fee owed to Wind River 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 valid and fully executed Tax Exempt Certificate must be attached to this Agreement or the applicable Exhibit A or Quote, or the applicable purchase order. Customer will 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. If Customer elects to receive Software under this Agreement via electronic download as specified in the appropriately executed order documentation, and subsequently elects to receive such Software designated for electronic download via physical media delivery, indirect taxes (e.g., sales taxes, VAT or similar transaction-based taxes) and interest may be due and Customer agrees to reimburse and hold harmless Wind River for and against any applicable indirect taxes and interest related to such Software. For the avoidance of doubt, the applicable interest rate will be the applicable interest rate for each jurisdiction's respective rate for indirect tax underpayments.

9.3 Reports and Records

- 9.3.1 **Production License Report.** Within thirty (30) days following the end of each license quarter, Customer will submit a Production License Report (which may also be referred to as a "Run-Time Module License Report") to Wind River's email alias (CustomerReports@windriver.com). The License Report will include the following information:
- (a) The number of Run-Time Modules and Target Applications manufactured or reproduced by or for Customer during the quarter, organized by Project and Target Application;
 - (b) The Development Location(s) and number of Development Licenses being used for such Project(s) and Target Application(s);
 - (c) The Production License fees due to Wind River;
 - (d) The production start and end dates for each Target Application;
 - (e) The unique part number or identifier referred to in Section 9.5; and
 - (f) Such other information as Wind River may reasonably request.

Customer will provide a Production License Report even if no Run-Time Modules copies were manufactured or reproduced during the subject quarter. A copy of the Production License Report will accompany payment of the Production License fees. Wind River may substitute the requirement to submit a Production License Report via Wind River's email alias with a requirement to submit such report to Wind River's on-line customer support web page upon notice to Customer.

- 9.3.2 **Software Usage License Report.** Upon Wind River's request, Customer will submit a Software Usage License Report to Wind River's reporting email alias (CustomerReports@windriver.com), which report is generated through the license management technology in the Software. Any User or access that is not reflected or captured in the report generated through the management technology in the Software must be reported by Customer along with the Software License Usage Report. If for any reason Customer cannot generate and provide to Wind River Software Usage License Reports via the reporting alias using the license management technology in the Software, Wind River may request and Customer will provide to Wind River in writing the information that would otherwise be provided in such Software Usage License Reports,, within thirty (30) days of

Wind River's written request. If requested by Wind River, Customer agrees to meet with Wind River to discuss the reporting requirements set forth in this Section 9.3 within sixty (60) days of the Agreement execution date.

- 9.3.3 **Records.** Customer will maintain accurate and complete records in support of and documenting all information provided in each of the Production License Reports and the Software Usage Reports, including without limitation the following: the Development Location of each copy of the Software in Customer's and their Authorized Developer's possession or use (including with respect to Network Access); the location and number of all Users; the quantity of Run-Time Module copies made and distributed by or for Customer, along with the name(s) of the applicable Target Application(s) and Unique Identifiers; the dates of manufacture and distribution of each Run-Time Module, as embedded in the applicable Target Application.

- 9.4 **Customer Compliance.** Wind River or its designated representative will have the right to: (a) obtain from Customer a quarterly forecast of expected shipments of the Run-Time Module(s) and Target Application(s) for the subsequent calendar quarter; (b) require that Customer send a written certification of compliance with the terms of this Agreement within fifteen (15) days of Wind River's request; and (c) conduct an inspection and audit ("Audit") upon reasonable notice of the records set forth in Sections 3.2, 5.1, and 9.3 of this Agreement, electronic logs of access to the Software (which are generated by the license management technology delivered with the Software), the relevant operational, accounting and sales books and records of Customer, Customer's Authorized Developer's and Customer's Authorized Manufacturers, and any other information within Customer's possession or control that is reasonably necessary to determine whether Customer has complied with this Agreement, and obtain true and correct photocopies of the foregoing materials. Such Audit will be conducted during regular business hours at Customer's offices and so as not to interfere unreasonably with Customer's normal business activities, and not more frequently than once every six (6) months. Customer will permit completion of any Audit within forty-five (45) days of notice. If an Audit discloses any underpayment of fees, then Wind River will invoice Customer for, and Customer will promptly pay Wind River, the underpaid fee amounts based on the higher of the price specified in this Agreement or Wind River's price list in effect at the time the audit is completed, together with interest in accordance with Section 9.1. If an Audit discloses underpayment of five percent (5%) or more, then Wind River will also invoice Customer for, and Customer will promptly pay Wind River's reasonable costs of conducting the Audit. Should the Customer elect to use an Authorized Developer or Authorized Manufacturer then the Authorized Developer or Authorized Manufacturer will be subject to all Audit requirements set forth in this Section 9.4.

10. **LIMITED WARRANTY.**

- 10.1 **Limited Warranty.** Wind River warrants that the media on which the Software is delivered will be free from defects in materials or workmanship for a period of ninety (90) days from the date of shipment ("Warranty Period"). If during the Warranty Period the media on which Software is delivered proves to be defective, Wind River will repair or replace such media, at Wind River's option, as Customer's sole remedy for any breach of warranty hereunder. Customer assumes full responsibility for: (a) the selection of the Software; (b) the proper installation and use of the Software; (c) verifying the results obtained from the use of the Software; and (d) taking appropriate measures to prevent loss of data.

- 10.2 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1, 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 NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WIND RIVER, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES WILL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. WIND RIVER DOES NOT WARRANT THAT THE QUALITY OR PERFORMANCE OF THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT CUSTOMER WILL BE ABLE TO ACHIEVE ANY PARTICULAR RESULTS FROM USE OR MODIFICATION OF THE SOFTWARE OR THAT THE SOFTWARE WILL OPERATE FREE FROM ERROR. 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 OF WIND RIVER 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. 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 gives Customer specific legal rights and Customer may have other rights that vary from jurisdiction to jurisdiction.

11. SERVICES.

- 11.1 **Support & Maintenance.** The Software license fees do not include support, installation or training. If available, support and maintenance services may be purchased at Wind River's then-current rates and in accordance with Wind River's then current Software Support and Maintenance Agreement. A copy of the current Software Support and Maintenance Agreement can be accessed through Wind River's website: http://windriver.com/support/WindRiverSupportTerms_March2014.pdf and is hereby incorporated by reference.
- 11.2 **Professional Services.** Professional services offered by Wind River are not included as part of support and maintenance, and are available, at additional cost, subject to Wind River's then current Professional Services Terms and Conditions, which can be accessed through Wind River's website: http://windriver.com/services/ProductAgreementServicesAttachment_March2014.pdf and is hereby incorporated by reference.
- 11.3 **Education and Training.** Education and training products offered by Wind River (e.g. mentoring, live or remote classes, etc) are not included as part of support and maintenance, and are available, at additional cost, subject to Wind River's then current Education Services Terms and Conditions, which can be accessed through Wind River's website: https://education.windriver.com/content/public/resources/Wind_River_ES_Terms_and_Conditions.pdf and is hereby incorporated by reference.

12. INFRINGEMENT INDEMNITY.

- 12.1 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 based on an allegation that the Software, as delivered by Wind River to Customer, when used as expressly permitted under this Agreement: (i) directly infringes such third party's copyright or patent; or; (ii) misappropriates a trade secret of such third party (an "Infringement Claim"). Wind River will 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 are conditioned on Customer (i) notifying Wind River in writing promptly after Customer becomes aware of an Infringement Claim; (ii) allowing Wind River the right 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) fully and timely 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. Wind River will not be responsible for any costs, expenses or compromise incurred or made by Customer without Wind River's prior written consent. If the Software is held in any such suit to infringe such a right and its use is enjoined, or if in the opinion of Wind River the Software is likely to become the subject of such a claim, Wind River may, in its sole discretion and at its own expense: (i) procure for Customer the right to continue using the Software; (ii) modify or replace the Software so it becomes non-infringing while giving substantially equivalent performance; or (iii) upon Customer's return of the Software to Wind River, refund amounts Customer paid Wind River under this Agreement for the Software which is the subject of such Infringement Claim for the preceding twelve (12) months.
- 12.2 Wind River's indemnification obligations under this Section will not apply to the extent such infringement actions or claims are based on or result from:
- 12.2.1 Modifications other than Software patches, updates and upgrades which Wind River makes available to licensees of the Software pursuant to the Support and Maintenance Agreement;
 - 12.2.2 the combination of the Software with any other item;
 - 12.2.3 Third Party Software;

- 12.2.4 Customer's failure to use the most recent version of the Software;
- 12.2.5 an allegation that the Software implements or complies with, in whole or in part, as shipped or when used, a Standard;
- 12.2.6 an allegation that the Software complies, in whole or in part, as shipped or when used, with any media decoding, encoding, or transcoding technology (such as, for example, through use of an audio or video codec).
- 12.2.7 any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by Customer alleging patent infringement; or
- 12.2.8 Customer's willful infringement.

For purposes of this Section 12, "Standard" means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public. "Standard" includes "de facto" technology or technical standards that are initially introduced by one or more entities, which then become more widely adopted by others in other products; includes features characterized as "mandatory," "optional," and their equivalents; and includes versions characterized as "draft." Examples of Standards include GSM, GPRS, EDGE, CDMA, UMTS, LTE, WCDMA, WiFi (also known as 802.11[x]), Bluetooth (also known as 802.15.1), and de-facto standards such as HTML or VHS (video). Examples of entities that promulgate, distribute, specify or publish Standards include the IEEE, ITU, 3GPP, ETSI, and the USB Implementers' Forum.

- 12.3 The foregoing indemnity is personal to Customer. Customer may not assign, transfer or pass through this indemnity to End Users. Customer will notify End Users that they must look solely to Customer for any indemnity for claims of infringement asserted against Target Applications purchased from Customer.
- 12.4 THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND WIND RIVER'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT ARISING OUT OF OR RELATED TO SOFTWARE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT.
- 13. **CUSTOMER INDEMNITY.** Customer will defend at its expense Wind River against any claims, suits, or proceedings brought against Wind River by third parties resulting from or in connection with the use, manufacture, or distribution of Target Applications by Customer or by Customer's direct or indirect End Users and will indemnify Wind River for any costs, losses, damages, and expenses (including reasonable attorney fees) resulting from or in connection of such claim, suit, or proceeding. Customer's indemnity obligation 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 an Infringement Claim for Software that is covered by Wind River's indemnity obligations under Section 12.
- 14. **LIMITATION OF LIABILITY.** WIND RIVER AND ITS LICENSORS WILL 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, ARISING OUT OF OR RELATED TO THIS AGREEMENT, 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 AMOUNTS PAID TO WIND RIVER BY CUSTOMER FOR THE AFFECTED SOFTWARE PURSUANT TO THIS AGREEMENT 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.
- 15. **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.

16. **GENERAL.**

16.1 **Governing Law and Venue.** This Agreement is governed by the Czech law. Matters not expressly stipulated in the Agreement are governed by the relevant provisions of the Civil Code, Act no. 89/2012, Coll., as amended. Any disputes arising from this Agreement or relating to this Agreement will be resolved by a Czech court of the relevant jurisdiction in the place of registered address of the Customer, provided, however, that the parties will 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 will be entitled to its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

16.2 **U.S. 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. If the End User is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any data relating thereto or derived therefrom, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Customer will provide the Software to the U.S. Government or to U.S. Government End Users only pursuant to an End User License Agreement in accordance with the terms of this Agreement. This U.S. Government End Users clause is in lieu of, and supersedes, any Federal Acquisition Regulations ("FAR"), the Defense FAR Supplement ("DFARS"), or other clause or provision that addresses Government rights in computer software or technical data.

16.3 **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 will therefore be entitled to seek timely injunctive relief to protect Wind River's rights in addition to any and all remedies available at law.

16.4 **Notices.** All notices under this Agreement will 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 will be sent to the parties at the addresses set forth in the preamble of this Agreement or such other address as either party may designate for itself in writing.

16.5 **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.

16.6 **Use of Customer's Name.** Wind River may identify Customer as a customer of Wind River products or services. Upon Customer's public announcement of product designed with or containing Wind River products or services, Wind River may describe Wind River involvement in said product in press release and marketing materials, subject to Customer's prior consent.

16.7 **Assignment.** Customer will not assign, transfer or delegate any right, license or obligation under this Agreement to a third party, directly or indirectly, including by operation of law or through bankruptcy, merger, acquisition, sale or transfer of all, substantially all or any part of the business or assets of Customer or undergo a change of Control, without first obtaining Wind River's prior written consent, which

Wind River may withhold in Wind River's sole discretion. Any purported assignment, transfer, delegation or change of Control in violation of this Section 16.7 is null and void. Wind River may assign, transfer or delegate this Agreement or any right, license or obligation hereunder in its sole discretion.

- 16.8 **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.
- 16.9 **Waiver.** The failure of either party to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter; nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- 16.10 **Miscellaneous.** This Agreement will not create any agency, employment relationship, partnership or other form of joint enterprise between the parties. This Agreement and its attachments and exhibits constitute 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 will 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 will be revised so as to best accomplish the objectives of the parties. This Agreement is in the English language only, which language will be controlling in all respects, and all versions of this Agreement in any other language will be for accommodation only and will not be binding on the parties to this Agreement.

IN WITNESS WHEREOF, the parties' authorized representatives have executed this Agreement.

WIND RIVER SYSTEMS, INC.

By: *pp [Signature]*
Name: Bernadette D. Sramek
Title: Sr. Director
Date: 12/5/2014



UNIVERSITY OF WEST BOHEMIA

By: DEAN OF THE FAV
Name: MIROSLAV LAVICKA
Title: doc. RNDr., Ph.D.
Date: 15.12.2014

EXHIBIT A-1
WIND RIVER SYSTEMS, INC.
SOFTWARE DEVELOPMENT & DISTRIBUTION LICENSE AGREEMENT

THIS EXHIBIT A-1 TO THE SOFTWARE DEVELOPMENT & DISTRIBUTION LICENSE AGREEMENT ("Exhibit") is effective as of the last date executed by the parties below ("Effective Date") and supplements the **SOFTWARE DEVELOPMENT & DISTRIBUTION LICENSE AGREEMENT** signed concurrently with this Exhibit (the "Agreement") by and between **WIND RIVER SYSTEMS, INC.** ("Wind River"), and **UNIVERSITY OF WEST BOHEMIA** ("Customer"). The terms of the Agreement are hereby incorporated into this Exhibit by reference, and in the event of a conflict between this Exhibit A and the Agreement, the terms of this Exhibit A will prevail. The parties agree as follows:

If Customer wishes to obtain additional Development or Production Licenses for the Software licensed in this Exhibit A, Customer may issue a purchase order in lieu of executing a new Exhibit A, provided that: (a) any additional Development Licenses or Run-Time Module copies are for the same Project and Software licensed in the applicable Exhibit A or Quote; (b) the Software will be used at a Development Location already listed in the applicable Exhibit A or Quote; (c) Customer provides the required information on this Exhibit A in any such purchase order; and (d) the terms and conditions on such purchase order will have no effect.

Project: New Technologies for Information Society (NTIS) CZ.1.05/1.1.00/02.009

Approved Host: Windows / Linux

Supported Target Processor or Supported Architecture Family: ARM: Freescale: Cortex 9

Target Application: Sensors for evaluation of speed, acceleration for motion controls

Wind River Software Description and Development License Fee Schedule:

License Number: New

Line #	Product Code	Product Description	Unit Price	Support Dates	Qty	Net Price
1	500-181054	VxWorks 7 OEM License	15,950.00	1 Year	1	15,950.00
2	535-103796	Annual e-SUPPORT & Maintenance	3,509.00	1 Year	2	7,018.00
3	539-178389	Enterprise Support & Maintenance, Perpetual	1,596.00	1 Year	2	3,192.00
4	500-180908	VxWorks 7 Core Platform, Perpetual Node Locked	10,100.00	1 Year	1	10,100.00
5	535-103796	Annual e-SUPPORT & Maintenance Node Locked	2,222.00	1 Year	2	4,444.00
6	539-178389	Enterprise Support & Maintenance, Perpetual Node Locked	1,010.00	1 Year	2	2,020.00
						Total: 42,724.00 €

Line #	Product Code	Product Description	Qty	Unit Price	Net Price
7	550-181337	VxWorks 7.0 and Workbench Essentials Training - Public Live Remote (4 days). This training provides engineers with a fast, cost-effective way to acquire the skills necessary to develop real-time applications with VxWorks and Wind River® Workbench.	1.00	2,640.00	2,640.00
					Total: 2,640.00 €

Currency: Euros (€)

Development Location(s): University Of West Bohemia, Univerzitní 8, 306 14 Plzeň, Czech Republic

Contacts:

Customer Licensing/Commercial Contact	Technical Contact Information
Name: Jitka Ruzickova Tel: +420 37763 1311 Fax: Email: cibulov@ntis.zcu.cz	Name: Tel: Fax: Email:

IN WITNESS WHEREOF, the parties' authorized representatives have executed this Exhibit A.

WIND RIVER SYSTEMS, INC.

By: [Signature]
Name: Bernadette D. Sramek
Title: Sr. Director
Date: 12/5/2014



UNIVERSITY OF WEST BOHEMIA

By: DEAN OF THE FAV
Name: MIROSLAV LAVIČKA
Title: doc. RNDr., Ph.D.
Date: 15.12.2014



**ZÁPADOČESKÁ
UNIVERZITA
V PLZNI**

rektorka

POVĚŘENÍ

(v souladu se zák. č. 262/2006 Sb.; zákoník práce, ve znění pozdějších předpisů, zák. č. 111/1998 Sb., o vysokých školách, ve znění pozdějších předpisů; zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů)

Západočeská univerzita v Plzni, IČO: 49777513, se sídlem Plzeň, ul. Univerzitní 8/2732, PSČ: 306 14, jednající doc. PaedDr. Ilonou Mauritzovou, Ph.D., rektorkou, tímto

pověřuje

v souladu (i) s Rozhodnutím rektora č. 33R/2013 – Organizačním řádem Západočeské univerzity v Plzni ze dne 17. 12. 2013, ZCU 039203/2013, (ii) se zák. č. 111/1998 Sb., o vysokých školách; (iii) Statutem Západočeské univerzity v Plzni ze dne 30. 05. 2014,

jméno: Miroslav, příjmení: Lávička, narozen dne: 26. března 1971, bytem: Sídliště 716, 330 12 Horní Bříza, funkce: děkan Fakulty aplikovaných věd, zaměstnanec Západočeské univerzity v Plzni, zejména k:

- zajištění všech úkonů souvisejících s organizací, koordinací a výkonem činností při zadávání veřejných zakázek ve smyslu zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů, v rámci Operačního programu Výzkum a vývoj pro inovace, projekt NTIS, CTPVV;
- k podpisu všech právních úkonů souvisejících se zadáváním veřejných zakázek ve smyslu zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů, v rámci Operačního programu Výzkum a vývoj pro inovace, projekt NTIS, CTPVV.

Toto pověření je platné ode dne jeho přijetí doc. RNDr. Miroslavem Lávičkou, Ph.D. a účinné od 1. 9. 2014.

V Plzni dne: 1. 8. 2014



.....
doc. PaedDr. Ilona Mauritzová, Ph.D., rektorka ZČU

Uvedené pověření přijímám:

.....
doc. RNDr. Miroslav Lávička, Ph.D., děkan FAV